

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

ARTHUR T. WATSON,)	
)	
Plaintiff,	)	Civil Action No.:
)	
v.	)	2:07-cv-520-WHA
)	
ALABAMA FARMERS)	
COOPERATIVE, INC. d/b/a)	
BONNIE PLANT FARMS,)	
)	
Defendant.		

**PLAINTIFF’S EVIDENTIARY MATERIALS IN OPPOSITION TO
DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

COMES NOW Plaintiff Arthur T. Watson and submits the following evidentiary materials in Opposition to the Defendant’s Motion for Summary Judgment:

- Exhibit 1. Deposition transcript of Arthur T. Watson
- Exhibit 2. Deposition transcript of Charlie Trussell
- Exhibit 3. Deposition transcript of Les Branham
- Exhibit 4. Deposition transcript of Adam Alley
- Exhibit 5. Deposition transcript of Tate Gatlin
- Exhibit 6. Deposition transcript of Joseph Padgett
- Exhibit 7. Deposition transcript of Joe Stuart
- Exhibit 8. EEOC Charge of Arthur T. Watson
- Exhibit 9. Defendant’s Response to Watson’s EEOC charge (Response to Exhibit A).

- Exhibit 10. Declaration of Arthur T. Watson
- Exhibit 11. Letter from Watson dated January 10th
- Exhibit 12. Letter from Watson dated February 2nd
- Exhibit 13. Declaration of Bobby Winders
- Exhibit 14. Declaration of David Boswell
- Exhibit 15. Fitness For Duty Report
- Exhibit 16. Release to full duty work
- Exhibit 17. 2003 Commission Report - Stuart
- Exhibit 18. 2004 Commission Report - Watson
- Exhibit 19. 2005 Commission Report - Watson
- Exhibit 20. 2006 Commission Report - Branham
- Exhibit 21. 2007 Commission Report - Branham

Respectfully submitted,

s/Jerry Roberson
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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of July, 2008, I electronically filed the foregoing with the Clerk of the Court using the using the Electronic Filing system which will send notification of such filing to the following:

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s/Jerry Roberson
Jerry Roberson (ROB010)

PLAINTIFF ARTHUR WATSON'S
EVIDENTIARY SUBMISSIONS
EXHIBIT 1

FREEDOM COURT REPORTING

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FREEDOM COURT REPORTING

<p style="text-align: right;">5</p> <p>1 IN THE UNITED STATES DISTRICT COURT FOR</p> <p>2 THE NORTHERN DISTRICT OF ALABAMA</p> <p>3 NORTHERN DIVISION</p> <p>4</p> <p>5 CASE NUMBER: CV 2:07 520-WHA</p> <p>6</p> <p>7 ARTHUR T. WATSON,</p> <p>8 Plaintiff,</p> <p>9 vs.</p> <p>10 ALABAMA FARMERS COOPERATIVE,</p> <p>11 INC., d/b/a BONNIE PLANT FARMS,</p> <p>12 Defendant.</p> <p>13 BEFORE:</p> <p>14 Michelle L. Parvin, Certified</p> <p>15 Court Reporter</p> <p>16 APPEARANCES:</p> <p>17 JERRY D. ROBERSON, Attorney at</p> <p>18 Law, 3765 Kinross Drive, P. O. Box 380487,</p> <p>19 Birmingham, Alabama, 35238-0487, appearing on</p> <p>20 behalf of the Plaintiff.</p> <p>21 BURR & FORMAN by Mr. Dent M.</p> <p>22 Morton, 420 20th Street North, Suite 3400,</p> <p>23 Birmingham, Alabama, 35203, appearing on</p>	<p style="text-align: right;">7</p> <p>1 I, Michelle L. Parvin, a Court</p> <p>2 Reporter of Birmingham, Alabama, acting as</p> <p>3 Commissioner, certify that on this date, as</p> <p>4 provided by the Federal Rules of Civil</p> <p>5 Procedure of the United States District</p> <p>6 Court, and the foregoing stipulation of</p> <p>7 counsel, there came before me at 3100</p> <p>8 Wachovia Tower, 420 20th Street North,</p> <p>9 Birmingham, Alabama, 35203, beginning at 1:05</p> <p>10 p.m., ARTHUR T. WATSON, witness in the above</p> <p>11 cause, for oral examination, whereupon the</p> <p>12 following proceedings were had:</p> <p>13</p> <p>14 ARTHUR T. WATSON,</p> <p>15 being first duly sworn, was examined and</p> <p>16 testified as follows:</p> <p>17</p> <p>18 EXAMINATION BY MR. MORTON:</p> <p>19</p> <p>20 Q. Mr. Watson, would you state your</p> <p>21 full name for the record, please?</p> <p>22 A. Arthur Terrell Watson.</p> <p>23 Q. Mr. Watson, have you ever been</p>
<p style="text-align: right;">6</p> <p>1 behalf of the Defendant.</p> <p>2</p> <p>3 Also Present:</p> <p>4 Joe Stewart</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>	<p style="text-align: right;">8</p> <p>1 deposed before? Have you ever given a</p> <p>2 deposition before?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. What kind of case did you</p> <p>5 give a deposition in?</p> <p>6 A. Automobile -- I had a wreck on a</p> <p>7 Bonnie truck.</p> <p>8 Q. Okay. Well, I just want to tell</p> <p>9 you a few rules for depositions so we try to</p> <p>10 stay on the same sheet of music, okay? First</p> <p>11 of all, if I ask you a question and you don't</p> <p>12 understand it, please let me know. I'll try</p> <p>13 to explain it, rephrase it, or whatever so</p> <p>14 we're on the same sheet of music. If you</p> <p>15 don't tell me that you don't understand my</p> <p>16 question, then, I'm going to assume you</p> <p>17 understand it, and I'm going to assume that</p> <p>18 your answer is responsive to the question,</p> <p>19 okay?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Let's try not to talk on top of</p> <p>22 each other during the deposition. Try to let</p> <p>23 me finish my questions before you start your</p>

FREEDOM COURT REPORTING

<p>9</p> <p>1 answers. I'll try to let you finish your</p> <p>2 answers before I start with another question,</p> <p>3 okay?</p> <p>4 A. Yes, sir.</p> <p>5 Q. It is difficult for her to take</p> <p>6 down a head nod or an uh-huh or an huh-uh.</p> <p>7 So, please give your answers out loud</p> <p>8 verbally, all right?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Mr. Roberson was saying a second</p> <p>11 ago, you may need some breaks, that's fine.</p> <p>12 We'll probably need some breaks, too. But if</p> <p>13 at any time you need a break, please let me</p> <p>14 know and we'll accommodate you, all right?</p> <p>15 What's your address, Mr. Watson?</p> <p>16 A. 28 -- my mailing address is 2801</p> <p>17 Industrial Boulevard, Beeville, Texas, 78102.</p> <p>18 Q. All right. And is that your</p> <p>19 permanent residence?</p> <p>20 A. No, sir.</p> <p>21 Q. Where's your permanent residence?</p> <p>22 A. P.O. Box 106, Glenwood, Alabama,</p> <p>23 36034.</p>	<p>11</p> <p>1 State University.</p> <p>2 Q. What'd you get your degree in?</p> <p>3 A. Got a Bachelor of Science in</p> <p>4 general business.</p> <p>5 Q. And when was that?</p> <p>6 A. I probably got my degree in the</p> <p>7 early '70s, just guessing.</p> <p>8 Q. All right. Do you have any</p> <p>9 other -- any other education, any other</p> <p>10 degrees?</p> <p>11 A. No, sir.</p> <p>12 Q. Now, when did you go to work for</p> <p>13 Alabama Farmers Cooperative first?</p> <p>14 A. When they bought Joe Stewart and</p> <p>15 Company out.</p> <p>16 Q. And Joe Stewart would be the</p> <p>17 gentleman sitting to my left here?</p> <p>18 A. Yes, sir.</p> <p>19 Q. All right. How long did you work</p> <p>20 for Mr. Stewart before Alabama Farmers bought</p> <p>21 his company?</p> <p>22 A. I would guess seven years.</p> <p>23 Q. And what type of work did you do</p>
<p>10</p> <p>1 Q. P.O. Box?</p> <p>2 A. 106, Glenwood, G-l-e-n-w-o-o-d,</p> <p>3 one word.</p> <p>4 Q. Glenwood, Alabama.</p> <p>5 A. 36034.</p> <p>6 Q. Where is Glenwood?</p> <p>7 A. It's about halfway between</p> <p>8 Luverne and Troy. It's eighteen miles west</p> <p>9 of Troy.</p> <p>10 Q. How long have you lived there?</p> <p>11 A. Off and on since probably the mid</p> <p>12 '70s.</p> <p>13 Q. How long have you been there this</p> <p>14 time? How long has that been your permanent</p> <p>15 address this time around?</p> <p>16 A. Well, you know, I go work and be</p> <p>17 gone six months, three months, four months at</p> <p>18 a time. But that's been my permanent --</p> <p>19 that's been my address for probably forty</p> <p>20 years.</p> <p>21 Q. All right. What's your</p> <p>22 educational background?</p> <p>23 A. I got a B.S. Degree from Troy</p>	<p>12</p> <p>1 for them?</p> <p>2 A. Route salesman.</p> <p>3 Q. Was your work about the same kind</p> <p>4 of work that you have since done for --</p> <p>5 A. Yes.</p> <p>6 Q. -- Alabama Farmers?</p> <p>7 MR. ROBERSON: Dent, I guess</p> <p>8 everybody knows but me, but when was that</p> <p>9 purchase; do you know?</p> <p>10 MR. MORTON: Not off the top of</p> <p>11 my head.</p> <p>12 MR. STEWART: 1976. I think</p> <p>13 that's right.</p> <p>14 MR. ROBERSON: I'm sorry. I'm</p> <p>15 just trying to get a point of reference here.</p> <p>16 Q. (BY MR. MORTON) What do you have</p> <p>17 in front of you there, Mr. Watson?</p> <p>18 A. I've just got a notebook on some</p> <p>19 things that I did on my route. I just wrote</p> <p>20 down a few notes that I thought I might need</p> <p>21 today that I discussed with Jerry. And that</p> <p>22 is an example of the payment plan that Bonnie</p> <p>23 offers to settle it.</p>

FREEDOM COURT REPORTING

<p style="text-align: right;">13</p> <p>1 Q. Well, I don't mind you referring</p> <p>2 to notes if you want to during your</p> <p>3 deposition.</p> <p>4 MR. MORTON: But if he does that,</p> <p>5 I'm entitled to a copy of them.</p> <p>6 MR. ROBERSON: I was going to</p> <p>7 make them an exhibit. So, I mean, if you</p> <p>8 want to make a copy now, that would be fine.</p> <p>9 MR. MORTON: Yeah, why don't I</p> <p>10 get somebody in here to be copying them, and</p> <p>11 we can --</p> <p>12 MR. ROBERSON: Sure.</p> <p>13 MR. MORTON: -- proceed with the</p> <p>14 deposition.</p> <p>15</p> <p>16 (Whereupon, a discussion was held</p> <p>17 off the record.)</p> <p>18</p> <p>19 Q. (BY MR. MORTON) Where were you</p> <p>20 working for Joe Stewart and Company, Mr.</p> <p>21 Watson?</p> <p>22 A. New Summerfield, Texas.</p> <p>23 Q. And where is New Summerfield,</p>	<p style="text-align: right;">15</p> <p>1 A. Yes, sir.</p> <p>2 Q. And how long did you continue on</p> <p>3 that route?</p> <p>4 A. I would guess I stayed on that</p> <p>5 same route probably fourteen years, something</p> <p>6 in that neighborhood.</p> <p>7 Q. Did the route change materially</p> <p>8 during that time?</p> <p>9 A. Yes, sir, there were great</p> <p>10 changes in the route. When I started, we</p> <p>11 worked mostly independent stores. We had to</p> <p>12 build our own route. We had to go to the</p> <p>13 store and explain our program to them,</p> <p>14 deliver the plants to them. And we worked no</p> <p>15 chain stores at all.</p> <p>16 MR. MORTON: Let's go off the</p> <p>17 record a second.</p> <p>18</p> <p>19 (Whereupon, a discussion was held</p> <p>20 off the record.)</p> <p>21</p> <p>22 Q. (BY MR. MORTON) All right. And</p> <p>23 the changes in your route, then, were that</p>
<p style="text-align: right;">14</p> <p>1 Texas?</p> <p>2 A. It's about ninety miles south of</p> <p>3 Shreveport.</p> <p>4 Q. Is it in extreme east Texas?</p> <p>5 A. Yes, sir, extreme Texas, and it's</p> <p>6 probably sixty miles south of Tyler, Texas.</p> <p>7 THE COURT REPORTER: Can you</p> <p>8 speak up just a little bit, please?</p> <p>9 THE WITNESS: Yes, ma'am.</p> <p>10 Q. When you were working there,</p> <p>11 where was your physical route? Was it in</p> <p>12 Texas or was it in Louisiana or did it vary</p> <p>13 from time to time?</p> <p>14 A. I started in Texas and worked</p> <p>15 stores in Texas and Louisiana.</p> <p>16 Q. All right. At the time that you</p> <p>17 went to work for Bonnie Plant Farm, Alabama</p> <p>18 Farmers Cooperative, what was your first</p> <p>19 route with Bonnie?</p> <p>20 A. It was the same route I had with</p> <p>21 Joe Stewart.</p> <p>22 Q. And that was in both Texas and</p> <p>23 Louisiana?</p>	<p style="text-align: right;">16</p> <p>1 you went to being heavily dependent on large</p> <p>2 stores like Home Depot and Lowe's and places</p> <p>3 like that?</p> <p>4 A. Well, that was one of the big</p> <p>5 changes. We still worked the independents,</p> <p>6 too.</p> <p>7 Q. Okay.</p> <p>8 A. One of the big changes was they</p> <p>9 add on chain stores.</p> <p>10 Q. All right. Now, after your</p> <p>11 fourteen or so years on the route out of</p> <p>12 Summerfield, Texas, did your route change?</p> <p>13 A. Yes, sir. It changed many times</p> <p>14 during the fourteen years that I was on that</p> <p>15 route.</p> <p>16 Q. Okay. And you mean the actual</p> <p>17 physical location that you stopped?</p> <p>18 A. The actual physical location that</p> <p>19 I stopped changed many times.</p> <p>20 Q. Then, from the route out of</p> <p>21 Summerfield, Texas, where did you go? Did</p> <p>22 you go to Bells, Tennessee?</p> <p>23 A. Went to Bells, Tennessee.</p>

FREEDOM COURT REPORTING

<p style="text-align: right;">17</p> <p>1 Q. And did you go to Bells, 2 Tennessee -- did you agree to swap routes 3 with somebody -- 4 A. Yes, sir. 5 Q. -- to go to Bells? 6 A. Yes, sir, we discussed that it'd 7 probably be a lot easier on me to run a 8 shorter route with fewer miles and fewer 9 stops on it. 10 Q. And who did you have that 11 conversation with? 12 A. Butch Stewart. 13 Q. And who is Butch Stewart? 14 A. He's the routeman that I swapped 15 routes with that's been a good plant man for 16 a long time. 17 Q. Okay. And was it your idea to 18 change? 19 A. Yes, sir, it was mine and his 20 consensually. He thought that he'd be better 21 off working more. Out in Texas, he worked in 22 the fall and worked a big fall route. And he 23 thought it would be good for him to be able</p>	<p style="text-align: right;">19</p> <p>1 A. He just agreed to it. He never 2 had a big conversation about it. 3 Q. Do you remember anything in 4 particular that he told you in connection 5 with the change in routes? 6 A. No, sir, I don't. 7 Q. All right. Now, how old were you 8 at that time, Mr. Watson? 9 A. I must have been fifty-nine or 10 fifty-eight. 11 Q. By the way, how old are you now? 12 A. I'm sixty-three. I was born 13 January the 12th, 1945. 14 Q. Now, why did you want a shorter 15 route with fewer miles and fewer stops? 16 A. Well, my knee had wore out, and 17 that's the reason you replace them. I had 18 bone spurs in my feet that I had removed. 19 And the hours and time in those trucks are 20 hard on your body. 21 Q. You say the hours and time in the 22 trucks are hard on your body? 23 A. Yes, sir. You hurt in places you</p>
<p style="text-align: right;">18</p> <p>1 to work rather than be off during those 2 times. 3 Q. All right. And was part of the 4 idea of your going to Bells that you would 5 not run -- not have to run a fall route? 6 A. Yes, sir, I was planning on 7 having knee surgery. I had a knee 8 replacement. And I had both feet operated 9 on. 10 Q. And did you intend for the change 11 to be permanent? 12 A. Yes, sir. 13 Q. Now, did anybody approve y'all's 14 route change as far as you know? 15 A. Yes, sir. 16 Q. Who approved it? 17 A. Had to approve it. Joe Stewart 18 had to approve it for it to take place. 19 Q. Did you have any discussions with 20 Mr. Stewart about it? 21 A. Yes, sir. 22 Q. And what discussions did you have 23 with Mr. Stewart about it?</p>	<p style="text-align: right;">20</p> <p>1 didn't know you had. And that's even younger 2 people. 3 Q. Do you remember who approached 4 whom as between you and Butch about this swap 5 originally? 6 A. I don't even remember how the 7 conversation came up. We talked a lot and we 8 visit a lot. And we just started talking 9 about it one day. And he thought it would be 10 a good thing, and I thought it would be a 11 good thing. 12 Q. Now, you told me that you talked 13 to Joe and that Joe approved it, but you 14 don't remember anything specific about that 15 conversation? 16 A. No, sir. 17 Q. Did you have any conversations 18 with anybody else at the management level 19 about that swap? 20 A. Adam Alley and Bill Rainer. 21 Q. All right. Now, for the record, 22 who is Adam Alley? 23 A. Adam Alley is the station manager</p>

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21

1 in Bells, Tennessee.
 2 Q. And what conversations did you
 3 have with Mr. Alley about your swapping
 4 routes with Mr. Stewart?
 5 A. I told him that I'd like to come
 6 up there and work with him and that I would
 7 need a truck with an air ride seat to help
 8 take some of the road bumps off of it.
 9 Q. Did you say an air ride seat?
 10 A. Yes, sir.
 11
 12 (Whereupon, a discussion was held
 13 off the record.)
 14
 15 Q. (BY MR. MORTON) All right. Now,
 16 had you had an air ride seat in --
 17 A. Yes, sir.
 18 Q. -- Texas?
 19 A. Yes, it's a common seat in a
 20 truck. Just some trucks didn't have them in
 21 all models. Some trucks have air ride
 22 suspensions and some trucks have other type
 23 of suspension. And now, it's just a common

22

1 suspension to have air ride suspension. But
 2 you could have air ride suspension on your
 3 truck and not have an air ride seat for some
 4 reason.
 5 Q. All right.
 6 A. It was just the seat that they
 7 happened to put in the truck when they
 8 manufactured it.
 9 Q. All right. And what did Mr.
 10 Alley say when you told him you wanted to
 11 come work there?
 12 A. He agreed. He thought it might
 13 be a good swap.
 14 Q. And did he give you a truck with
 15 an air ride seat?
 16 A. Yes, sir. But, then, he was --
 17 the next year, I went up there, he decided he
 18 wanted somebody else to have that truck with
 19 the air ride seat and that he'd like for me
 20 to have one of the older trucks that didn't
 21 have an air ride seat in it. So, a younger
 22 person could have a nice truck with an air
 23 ride seat. They probably --

23

1 Q. All right. Well, the truck he
 2 gave you the first year, you said it had an
 3 air ride seat. Did it have an air ride
 4 suspension, too?
 5 A. Yes, sir.
 6 Q. All right. You told me a minute
 7 ago that you had a knee replaced, that you
 8 had both your feet operated on; is that
 9 correct?
 10 A. Yes, sir.
 11 Q. When did you have the knee
 12 replaced?
 13 A. I think it was in the off season
 14 of the '96 season, but that would be a guess.
 15 Q. All right. So, that was long
 16 before you negotiated to switch to Bells,
 17 right?
 18 A. Oh, no, sir. That was after I
 19 was at -- that must have been 2006.
 20 MR. ROBERSON: 2005, wasn't it?
 21 THE WITNESS: 2005?
 22 MR. ROBERSON: The fall of 2005?
 23 A. But I'm sure that's in, you know,

24

1 the medical records everywhere. And I'm sure
 2 you probably have that.
 3 Q. (BY MR. MORTON) All right. So,
 4 you had the knee replaced in the off season.
 5 Would that be after your first year at Bells
 6 or before?
 7 A. After.
 8 Q. All right. And did you also have
 9 your feet operated on during that same off
 10 season?
 11 A. That same off season.
 12 Q. Again, it'd be easier on her if
 13 you'll let me finish before you start your
 14 answer, okay?
 15 A. (Witness nods head.)
 16 Q. So, that was surgery on both feet
 17 to remove bone spurs?
 18 A. Yes, sir.
 19 Q. And was your knee replacement and
 20 your surgery on your feet covered by the
 21 insurance that you have through Alabama
 22 Farmers?
 23 A. Yes, sir.

FREEDOM COURT REPORTING

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1 Q. Now, the season -- the spring
2 season for Alabama Farmers in this part of
3 the country, the south part of the country,
4 starts what, the week after New Year's? Is
5 that typically when it starts?
6 A. It depends on what part of the
7 United States you're working. If you're
8 working out west, it starts in early January.
9 But the more east you come, the later it
10 starts. And the more north you go, the later
11 it starts.
12 Q. When did it start in Bells,
13 Tennessee, in 2006?
14 A. I usually went up in February.
15 Q. Did you report to work? Were you
16 supposed to report to work prior to that?
17 A. As a general rule, no. Whenever
18 they said come, I always went. When it
19 started getting time to go to work, I
20 prepared to go. And I never said, well, I'll
21 wait and come next week or the week after
22 that. I always tried to be there when they
23 said to be there.

26

1 Q. Okay. So, you worked in Bells,
2 Tennessee, starting the year after you had
3 your knee replacement and foot surgery; is
4 that right?
5 A. No, sir.
6 Q. Okay.
7 A. I worked the first year before I
8 had it.
9 Q. All right.
10 A. And the next year, I had it.
11 Q. You had it in the off season?
12 A. Yes, sir.
13 Q. All right. By the time you were
14 supposed to report to work in 2006, had your
15 doctor released you for full duty without
16 restriction?
17 A. Yes, sir.
18 Q. And when had he released you?
19 A. In January of that year.
20 Q. Okay. And did you go back to
21 work in Bells that year?
22 A. No, sir.
23 Q. So, you worked only one year in

27

1 Bells, Tennessee?
2 A. I worked two years in Bells,
3 Tennessee.
4 Q. You worked two years in Bells,
5 Tennessee. Well, did you work one before and
6 one after --
7 A. No, sir.
8 Q. -- your surgery?
9 A. After my surgery, I never went
10 back to Bells.
11 Q. Okay. So, you worked two years
12 in Bells before your surgery?
13 A. Yes, sir.
14 Q. All right. Now, you started to
15 tell me about the truck that you got the
16 second year in Bells. What truck did you get
17 the second year in Bells?
18 A. I got the truck with that -- with
19 the -- that didn't have the air ride seat in
20 it where all the shock was taken in the seat.
21 Q. Did that truck have an air ride
22 suspension?
23 A. Yes, sir.

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1 Q. Your second year in Bells, were
2 you on a shorter route than you had been on
3 the previous year?
4 A. No, sir.
5 Q. Were you on a different route
6 than you had been on the previous year?
7 A. Yes, sir. I was on the same
8 route number, but some stores had been taken
9 off of it. It had fewer stores.
10 Q. All right. Did you talk to Mr.
11 Alley about the fact that your truck didn't
12 have an air ride seat?
13 A. Yes, sir.
14 Q. Tell me about that conversation.
15 Tell me what you said, tell me what he said.
16 A. He said, if you're going to work,
17 drive that truck.
18 Q. Did he give you any explanation
19 for why he had --
20 A. No explanation whatsoever --
21 Q. -- swapped -- switched the
22 trucks?
23 A. -- why he switched.

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<p style="text-align: right;">29</p> <p>1 (Whereupon, a discussion was held 2 off the record.)</p> <p>3</p> <p>4 Q. (BY MR. MORTON) Now, some of the 5 stores were taken off your route that second 6 year, weren't they --</p> <p>7 A. Yes.</p> <p>8 Q. -- because you had not been able 9 to get around to them --</p> <p>10 A. No, sir.</p> <p>11 Q. -- the first year?</p> <p>12 A. No, sir. I had never been 13 told -- I had never been told that.</p> <p>14 Q. Have you ever been told why 15 trucks were taken off your route --</p> <p>16 A. No, sir.</p> <p>17 Q. -- I mean, stops were taken off 18 your route?</p> <p>19 A. No, I had never been told that.</p> <p>20 Q. Did you ask?</p> <p>21 A. I'm sure that I mentioned it on 22 occasion, but it -- they always changed 23 routes. And they said that they had changed</p>	<p style="text-align: right;">31</p> <p>1 A. No, sir.</p> <p>2 Q. Never?</p> <p>3 A. Not that I remember for a season.</p> <p>4 Q. Was the same truck that you had 5 been driving at that station that second 6 year?</p> <p>7 A. The first year, I drove a truck 8 with an air ride seat, then, the second year, 9 I didn't.</p> <p>10 Q. I understand that. What I'm 11 asking you is, the truck you drove the first 12 year, was somebody else at this particular 13 station, the Bells, Tennessee, station, 14 driving that truck?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Who was that?</p> <p>17 A. I don't know who was driving the 18 truck. It wasn't really -- I just needed one 19 with an air ride seat and had requested one 20 and didn't get one.</p> <p>21 Q. Were there other people at that 22 station who didn't have a truck with an air 23 ride seat, or do you know?</p>
<p style="text-align: right;">30</p> <p>1 those routes, and they gave somebody thirteen 2 stores to work in that area that year and 3 that they needed those to make out his 4 thirteen stores or twelve stores or whatever 5 it was.</p> <p>6 Q. Okay. So, it's not uncommon for 7 routes to be changed --</p> <p>8 A. No --</p> <p>9 Q. -- is that right?</p> <p>10 A. -- it's not uncommon for a route 11 to be changed.</p> <p>12 Q. And did you have thirteen stores 13 on your route?</p> <p>14 A. I had more than thirteen.</p> <p>15 Q. You had more than thirteen?</p> <p>16 A. (Witness nods head.)</p> <p>17 Q. So, you had more than the person 18 who got the stores that were taken off your 19 route?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Had you previously, prior to your 22 second year at Bells, driven a truck without 23 an air ride seat?</p>	<p style="text-align: right;">32</p> <p>1 A. I wouldn't think. I think I was 2 the only one that didn't have an air ride 3 seat, because I was probably the oldest 4 person working at that station. And that was 5 kind of the way to let them know.</p> <p>6 Q. Well, can you testify under oath 7 that nobody else at that station had an air 8 ride seat?</p> <p>9 A. No, sir, I couldn't.</p> <p>10 Q. Can you testify under oath that 11 everybody else at that station did have an 12 air ride seat, other than you?</p> <p>13 A. I couldn't testify to that, but 14 I --</p> <p>15 Q. Now, when you worked with Mr. 16 Stewart before you went to work for Bonnie, 17 you never had an air ride seat back then, did 18 you?</p> <p>19 A. I drove a Mack truck with Joe 20 Stewart about the whole time I worked with 21 him. And that truck had good suspension on 22 it. It wasn't as -- I wasn't really thinking 23 about it as much at that time until I was</p>

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1 younger and I was more able to work. And --
 2 but I didn't have any problems at that time.
 3 Q. Okay. But the answer to the
 4 question is, you didn't have an air ride seat
 5 when you worked with Mr. Stewart at his
 6 company; is that right?
 7 A. I don't know whether the seat was
 8 air ride or not. I know I had a nice truck.
 9 Q. Now, you said that that was --
 10 A. And that --
 11 Q. I'm sorry.
 12 A. Go ahead. I --
 13 Q. You said that that was when you
 14 were younger and more able to work. Are you
 15 not as able to work as you were then?
 16 A. Oh, no, sir, I have aged. And
 17 with age, you change and your abilities
 18 change, your thoughts change.
 19 Q. And the answer is, you're not as
 20 able to work anymore as you were then?
 21 A. No, sir.
 22 Q. So, you're saying you can work
 23 just as well now as you could then?

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1 A. No, sir. My answer is, no, I'm
 2 not as able to work as I was then.
 3 Q. Now, you said a few minutes ago
 4 that you thought that maybe you had a truck
 5 without an air ride seat your second year at
 6 Bells because you were the oldest person
 7 there?
 8 A. Yes, sir.
 9 Q. What makes you believe that?
 10 A. I don't remember anybody else
 11 even looking to see if they had an air ride
 12 or not.
 13 Q. Okay. You don't remember --
 14 A. I was the only person that worked
 15 there that it was important to to have an air
 16 ride seat.
 17 Q. When you say you don't remember
 18 anybody else looking, you mean you don't
 19 remember looking to see if anybody else had
 20 an air ride seat?
 21 A. That's right. I didn't look to
 22 see what anybody else had. I knew what I
 23 needed, and I asked for what I needed. And

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1 he didn't give it to me because of my age.
 2 Q. Okay. What I'm trying to get at
 3 is, why do you believe it was because of your
 4 age?
 5 A. Well, everybody else had what
 6 they wanted.
 7 Q. Well, tell me who else you know
 8 of had an air ride seat.
 9 A. Tony Brown, Johnny Roy Fendelson,
 10 Les Branum, Brent Raider. I don't know
 11 who -- Eric Rank.
 12 Q. You're certain under oath that
 13 all these people had air ride seats?
 14 A. No, sir, you asked me a general
 15 question, and that's just, in general, who
 16 was there driving trucks.
 17 Q. Okay. But you can't say
 18 specifically that any one of those people had
 19 an air ride seat, correct?
 20 A. Oh, no, sir.
 21 Q. All right. Any other reason that
 22 you believe, Mr. Watson, that the fact that
 23 you didn't have an air ride seat was due to

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1 your age?
 2 A. I'll just say that they had to
 3 have picked me out because of my age to be
 4 sure that I didn't get a truck with an air
 5 ride seat for me not to have one.
 6 Q. All right. Well, you had had an
 7 air ride seat the year before, correct?
 8 A. Yes, sir.
 9 Q. Why did you think one year made
 10 that much difference, Mr. Watson?
 11 A. I don't know. I don't know how
 12 people think. I can't think for somebody
 13 else.
 14 Q. Okay. Have you told me all the
 15 reasons you believe that the fact that you
 16 didn't have an air ride seat your second year
 17 at Bells was based on your age?
 18 A. Yes, sir.
 19 Q. And that would be that you
 20 believe everybody else had what they wanted,
 21 and you didn't get the air ride seat, and,
 22 therefore, you think it must have been your
 23 age because you were the oldest?

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<p style="text-align: right;">37</p> <p>1 A. Yes, sir, and I was the only one 2 that it was important to have one. 3 Q. Do you know whether any of the 4 other folks requested an air ride seat? 5 A. I have no idea. 6 7 (Whereupon, a discussion was held 8 off the record.) 9 10 Q. (BY MR. MORTON) Did you have any 11 discussions with anybody, other -- anybody in 12 a management position, other than Mr. Alley, 13 about the fact that you wanted, but did not 14 have, an air ride seat? 15 A. Yes, sir. 16 Q. Who did you talk to? 17 A. I called Joe, and I couldn't get 18 him on the phone. So, I discussed it with 19 Kyle. And they didn't appear to be 20 interested in it. So, I went to work just 21 like they said do. 22 Q. All right. What conversation did 23 you have with Kyle?</p>	<p style="text-align: right;">39</p> <p>1 station? 2 A. I don't know. I had one of the 3 shorter ones. I wouldn't -- I mean, compared 4 to what I was used to driving, it was -- 5 Q. It was what? 6 A. Shorter. 7 Q. Other than talking to Mr. Alley 8 on one occasion that you described to me 9 about not having an air ride seat the second 10 year, did you have any discussions with him 11 on that subject? 12 A. Not that I remember. 13 Q. Okay. Other than talking to Kyle 14 when you tried to get in touch with Joe here 15 about the issue, did you talk to anybody else 16 in a management position about that issue, 17 the fact that you didn't have an air ride 18 seat -- 19 A. No, sir. 20 Q. -- the second year at Bells? 21 A. No, sir. 22 Q. Did you have any disputes with 23 Mr. Alley during your second year at Bells?</p>
<p style="text-align: right;">38</p> <p>1 A. I just told him that I had asked 2 Adam for an air ride seat when I went up 3 there. And he said he'd let me have a truck 4 with an air ride seat, and he didn't. And 5 I'd like to know if he could help me get one. 6 And he said he couldn't. 7 Q. Did you tell Kyle anything else? 8 A. That was all. 9 Q. Okay. Did you tell him 10 anything -- did you tell him that you thought 11 it was because of your age? 12 A. No, sir. 13 Q. Did you have any disputes with 14 Mr. Alley during your first year at Bells? 15 A. Not that I know of. 16 Q. During your second year at 17 Bells -- well, one of the reasons you had 18 gone up to Bells, as I understand it, is you 19 wanted to get a shorter route than what you 20 had in Texas, correct? 21 A. Correct. 22 Q. During your second year at Bells, 23 did you have the shortest route out of that</p>	<p style="text-align: right;">40</p> <p>1 A. No, sir. 2 Q. During your first year at Bells, 3 did Mr. Alley in any way criticize your 4 performance? 5 A. No, sir. 6 Q. At the end of your first year at 7 Bells, or during the off season between your 8 first and second years, did he in any way 9 criticize your performance? 10 A. No, sir, he never said anything 11 to me. If he did, he said it to somebody 12 else. 13 Q. Did anybody else criticize your 14 performance during your first year at Bells 15 or during the off season afterwards? 16 A. No, sir. 17 Q. Did you talk with any of your co- 18 employees about the fact that you didn't have 19 an air ride seat your second year at Bells? 20 A. I imagine I said something around 21 somebody about it. But when you're in the 22 plant business, you don't have time to cry 23 long about anything. You have to go on and</p>

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<p style="text-align: right;">41</p> <p>1 attend to the business. And I went on, and I</p> <p>2 attended to the business.</p> <p>3 Q. Do you remember anybody or any of</p> <p>4 your co-workers saying anything to you about</p> <p>5 that fact, that you didn't have an air ride</p> <p>6 seat?</p> <p>7 A. I don't recall anything today.</p> <p>8 Q. Now, did you have helpers your</p> <p>9 first year at Bells?</p> <p>10 A. Sir?</p> <p>11 Q. Did you have helpers your first</p> <p>12 year at Bells?</p> <p>13 A. Yes, I've had helpers everywhere</p> <p>14 I've worked.</p> <p>15 Q. How many did you have?</p> <p>16 A. One to two.</p> <p>17 Q. At Bells, you had one to two?</p> <p>18 A. Yes, sir.</p> <p>19 Q. All right. When did you have</p> <p>20 one?</p> <p>21 A. In the early part of the season</p> <p>22 when things were slower and you had time to</p> <p>23 get around and do. When I was putting up</p>	<p style="text-align: right;">43</p> <p>1 replacement surgery and had an infection got</p> <p>2 in there. And they put pins in his legs.</p> <p>3 And he's in his seventies. And he asked me</p> <p>4 to take him to visit his brothers in Mobile.</p> <p>5 And Joe called me and told me that he wanted</p> <p>6 a meeting with him on a Tuesday. I remember</p> <p>7 it was in November, because it was election</p> <p>8 time. I told him I'd be back and come over</p> <p>9 there.</p> <p>10 Well, that Tuesday morning,</p> <p>11 voting, Sam asked me if I'd take him to vote</p> <p>12 before I left. So, we got down there when</p> <p>13 the polls opened to take him to vote. And</p> <p>14 Joe called me and wanted to know why I wasn't</p> <p>15 over there, and I told him. And then, I came</p> <p>16 on to Union Springs. And that was when he</p> <p>17 told me that I wouldn't be going back to</p> <p>18 Bells.</p> <p>19 Q. All right. Let's back up just a</p> <p>20 second. The guy with the two stiff knees,</p> <p>21 did he work for Bonnie?</p> <p>22 A. No, sir, he worked for the bank.</p> <p>23 I was coming home and -- but</p>
<p style="text-align: right;">42</p> <p>1 racks or something, I would take two. When</p> <p>2 it got in the heat of the season, we were</p> <p>3 hauling the plants real fast, I'd try to take</p> <p>4 two. And in the end of the season, I'd run</p> <p>5 one. And in the end of the season when we</p> <p>6 had to get up racks, I'd run with two.</p> <p>7 Q. All right. After your second</p> <p>8 year at Bells, where -- okay. During your</p> <p>9 second year at Bells, did Mr. Alley in any</p> <p>10 way criticize your performance?</p> <p>11 A. No, sir. He saw increases, big.</p> <p>12 Q. And --</p> <p>13 A. He saw good sales.</p> <p>14 Q. And after the season, did he in</p> <p>15 any way criticize your performance?</p> <p>16 A. Not to me.</p> <p>17 Q. Do you know if he criticized it</p> <p>18 to anybody else?</p> <p>19 A. Hearsay, I've heard people say</p> <p>20 things, but he didn't say anything to me.</p> <p>21 Q. What did you hear?</p> <p>22 A. I was -- I live with a guy that's</p> <p>23 got two stiff knees. Went to get knee</p>	<p style="text-align: right;">44</p> <p>1 lived in a trailer out in the woods, an old</p> <p>2 trailer had burned up. I mean, a tree had</p> <p>3 fell down on it. It hadn't burned up. And</p> <p>4 he said, why don't you move in with me and</p> <p>5 help me get started. And I just moved in</p> <p>6 with him. His wife had died when his</p> <p>7 children was young. And my children were</p> <p>8 raised up there with them. So, I moved in</p> <p>9 with him. Been living with him ever since.</p> <p>10 Q. What's his name?</p> <p>11 A. Sam Goodwin.</p> <p>12 Q. Goodwin?</p> <p>13 A. G double O d-w-i-n.</p> <p>14 Q. All right. So, you went to Union</p> <p>15 Springs, and you met with Joe. And Joe told</p> <p>16 you you weren't going back to Bells, or</p> <p>17 wouldn't be going back to Bells?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Did he tell you why?</p> <p>20 A. No, sir. He said it just didn't</p> <p>21 work out.</p> <p>22 Q. Did you ask for any other</p> <p>23 explanation?</p>

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<p style="text-align: right;">45</p> <p>1 A. No, sir.</p> <p>2 Q. What did you say to Joe?</p> <p>3 A. I told Joe that I needed to work.</p> <p>4 That if I sat down, I wouldn't never get up.</p> <p>5 And he said that he'd help me fill out my</p> <p>6 disability papers. And then, he said, no,</p> <p>7 he'd get his secretary to do it.</p> <p>8 Q. And what did you say to that?</p> <p>9 A. I said, well, probably age is --</p> <p>10 has a factor in this decision. My age</p> <p>11 probably has a factor in this decision.</p> <p>12 Q. You said that to Joe?</p> <p>13 A. Yes, sir.</p> <p>14 Q. What did Joe say?</p> <p>15 A. At the time, I don't remember the</p> <p>16 response, but he called me back in later and</p> <p>17 told me that he didn't want to hear anymore</p> <p>18 about this age thing. That they had people</p> <p>19 working there that was older than me and that</p> <p>20 they were hiring people that was older than</p> <p>21 me.</p> <p>22 Q. Were those statements true?</p> <p>23 A. I don't know. I hadn't seen</p>	<p style="text-align: right;">47</p> <p>1 at Donaldsonville?</p> <p>2 A. Charlie Trussell.</p> <p>3 Q. Is Charlie any kin to Tim</p> <p>4 Trussell?</p> <p>5 A. I think they're brothers.</p> <p>6 Q. In fact, Charlie Trussell's</p> <p>7 sixty-six years old, isn't he?</p> <p>8 A. I know he's a few years older</p> <p>9 than I am. I wouldn't know exactly how old</p> <p>10 he is.</p> <p>11 Q. And, in fact, Joe is older than</p> <p>12 you, is he not?</p> <p>13 A. Yes.</p> <p>14 Q. Now, when did you find out you</p> <p>15 were going to Donaldsonville, Louisiana?</p> <p>16 A. I would guess it was out in</p> <p>17 February. I wouldn't -- I mean, I don't</p> <p>18 remember.</p> <p>19 MR. ROBERSON: February of '06?</p> <p>20 Q. (BY MR. MORTON) Is that right?</p> <p>21 A. February of '06.</p> <p>22 Q. Now, did you tell me everything</p> <p>23 you can remember about the conversations that</p>
<p style="text-align: right;">46</p> <p>1 anybody older than me that they hired.</p> <p>2 Q. When he called you back in, when</p> <p>3 was that?</p> <p>4 A. I don't know. About a week or</p> <p>5 two after he told me that I wasn't going back</p> <p>6 to Bells.</p> <p>7 Q. When he called you back in, did</p> <p>8 he tell you to find you someplace to work?</p> <p>9 A. He told me that he'd help me get</p> <p>10 my disability.</p> <p>11 Q. Right. Did you agree to that?</p> <p>12 A. No, sir.</p> <p>13 Q. What'd you tell him?</p> <p>14 A. I told him I didn't think I could</p> <p>15 qualify.</p> <p>16 Q. What did he say?</p> <p>17 A. He said, well, he'd see what he</p> <p>18 could do. Something to that order.</p> <p>19 Q. And did he ultimately find you</p> <p>20 someplace to go work?</p> <p>21 A. Yes, sir. He sent me to</p> <p>22 Donaldsonville, Louisiana.</p> <p>23 Q. And who was your station manager</p>	<p style="text-align: right;">48</p> <p>1 you had with Joe here in which he calls you</p> <p>2 to Union Springs and told you you wouldn't be</p> <p>3 going back to Bells, and you said you thought</p> <p>4 age had something to do with it, and he told</p> <p>5 you he'd fill out your disability papers,</p> <p>6 then, you told me he called you back and told</p> <p>7 you he didn't want to hear anything else</p> <p>8 about age? Have you told me everything you</p> <p>9 can remember about those two conversations?</p> <p>10 A. Yes, sir. And Mr. Pete Trussell</p> <p>11 was in there. If you wanted to talk to him,</p> <p>12 he may remember some things I don't remember.</p> <p>13 Q. Pete Trussell?</p> <p>14 A. (Witness nods head.)</p> <p>15 Q. Who is that?</p> <p>16 A. He's Tim's brother that Tim is</p> <p>17 working where he was working with Bonnie.</p> <p>18 Q. And how old is Pete?</p> <p>19 A. I don't know. I'd say he was a</p> <p>20 good many years probably older than me. I'd</p> <p>21 say he was --</p> <p>22 Q. Older than you?</p> <p>23 A. -- in his seventies.</p>

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<p style="text-align: right;">49</p> <p>1 Yes, sir.</p> <p>2 Q. And what was he doing so far as</p> <p>3 work was concerned? What position did he</p> <p>4 have?</p> <p>5 A. He had the position that Tim</p> <p>6 Trussell has now.</p> <p>7 Q. Do you know what he's doing</p> <p>8 currently?</p> <p>9 A. No, sir.</p> <p>10 Q. Now, other than the one comment</p> <p>11 that you made about thinking that age had</p> <p>12 something to do with the decision, did you</p> <p>13 tell -- did you say anything else to Mr.</p> <p>14 Stewart about your age in either of those</p> <p>15 conversations?</p> <p>16 A. No, sir.</p> <p>17 Q. And did you tell him why you</p> <p>18 thought age had something to do with it?</p> <p>19 A. I insinuated -- I guess, more</p> <p>20 than what I said, I insinuated that age was</p> <p>21 the reason that he didn't send me back up</p> <p>22 there on that route.</p> <p>23 Q. Now, when you say you insinuated</p>	<p style="text-align: right;">51</p> <p>1 A. That age is the reason that he</p> <p>2 didn't send me back to Bells.</p> <p>3 Q. You understood him to be telling</p> <p>4 you that?</p> <p>5 A. Yes, sir.</p> <p>6 Q. When he told you that there were</p> <p>7 older people than you working for the</p> <p>8 company?</p> <p>9 A. Working for the company, yes,</p> <p>10 sir.</p> <p>11 Q. Why did you understand that to</p> <p>12 mean that age was the reason he wasn't</p> <p>13 sending you back?</p> <p>14 A. Well, most of the older people</p> <p>15 that I knew working for the company was in</p> <p>16 different type jobs. I don't know of anybody</p> <p>17 my age that was in the same type job.</p> <p>18 Q. Well, Mr. Stewart didn't tell you</p> <p>19 that age had anything to do with not sending</p> <p>20 you back to Bells, did he?</p> <p>21 A. No, sir, he didn't. He didn't</p> <p>22 tell me that.</p> <p>23 Q. Did anybody else tell you that?</p>
<p style="text-align: right;">50</p> <p>1 rather than actually said, how did you do</p> <p>2 that?</p> <p>3 A. I told him that I felt like that</p> <p>4 it was age discrimination, the reason he</p> <p>5 didn't send me back up there.</p> <p>6 Q. All right. And what did he say</p> <p>7 to you? Did he tell you that wasn't the</p> <p>8 reason?</p> <p>9 A. He said that they had people</p> <p>10 working there that was older than me.</p> <p>11 Q. Did he tell you age wasn't the</p> <p>12 reason?</p> <p>13 A. No, sir.</p> <p>14 Q. Did you understand from what he</p> <p>15 did tell you that that was his position, that</p> <p>16 age wasn't the reason?</p> <p>17 A. No, sir.</p> <p>18 Q. What did you understand him to be</p> <p>19 saying, then, when he told you that there</p> <p>20 were --</p> <p>21 A. That age was the reason that he</p> <p>22 didn't send me back up there.</p> <p>23 Q. I'm sorry. That what?</p>	<p style="text-align: right;">52</p> <p>1 A. No, sir, nobody -- I mean, nobody</p> <p>2 ever -- they just told me that it didn't work</p> <p>3 out up there.</p> <p>4 Q. And I believe you told me</p> <p>5 earlier, he didn't give you an explanation of</p> <p>6 what he -- of what he meant by it didn't work</p> <p>7 out?</p> <p>8 A. No, sir.</p> <p>9 Q. Did you have an understanding of</p> <p>10 what he meant?</p> <p>11 A. I understood that it was because</p> <p>12 of my age.</p> <p>13 Q. Okay. Well, why did you think</p> <p>14 that the decision not to send you back to</p> <p>15 Bells had something to do with your age?</p> <p>16 A. Well, as a general rule, when</p> <p>17 somebody increased a route, had a good</p> <p>18 increase in sales, and had a few problems on</p> <p>19 their route, they just left them on the</p> <p>20 route. They left me on the one route for, I</p> <p>21 don't know, fourteen, fifteen years.</p> <p>22 Q. Well, that wasn't an ironclad</p> <p>23 rule of the company, though, was it?</p>

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<p style="text-align: right;">53</p> <p>1 A. I don't know of any ironclad 2 rules that the company had. 3 Q. Well, you also would agree with 4 me, would you not, that it was pretty common 5 for station managers to say that they didn't 6 want somebody back and the company not send 7 that person back, correct? 8 A. I don't know. I hadn't been 9 around enough to know how they operate on 10 that. 11 Q. So, you don't know how the -- 12 A. I don't know -- 13 Q. -- decision making process works? 14 A. Not -- no, sir. 15 Q. You have known of people, though, 16 that have been -- 17 A. I don't know of anybody -- 18 Q. -- on a route one year and 19 somewhere else the next? 20 A. I don't know of anybody that had 21 increased their route, and then, went on a 22 route that didn't have the opportunity to go 23 back on that route.</p>	<p style="text-align: right;">55</p> <p>1 not to send you back to Bells had anything to 2 do with your age? 3 A. The only -- the only reason that 4 I know they didn't send me back is because of 5 my age. 6 Q. All right. Well, what I'm asking 7 you is, are there any other facts that you 8 think support the proposition that you 9 weren't sent back because of your age, other 10 than what you've told me so far? 11 A. There are no facts to support a 12 reason they didn't send me back. 13 Q. Okay. I want to make sure we're 14 on the same sheet of music. What I'm asking 15 you, have you told me all the facts that you 16 believe support the idea that they didn't 17 send you back because of your age? 18 A. The only reason that they didn't 19 send me back is because of my age. 20 Q. Okay. But I'm asking you why you 21 believe that. Is there any reason that you 22 believe that, other than what you've already 23 told me?</p>
<p style="text-align: right;">54</p> <p>1 Q. Now, at the time that you were 2 told that you were not going back to Bells, 3 weren't Earl Ledbetter and Donald McGrady 4 running routes with the company? 5 A. I don't really know what Earl and 6 Donald were doing. I thought Earl was going 7 around checking stations out. Donald McGrady 8 probably was running a route in Atlanta, I 9 think. 10 Q. And both -- and both -- 11 A. I'm not real sure. 12 Q. Okay. And both of those 13 gentlemen are older than you, are they not? 14 A. Yes, sir. And they left both of 15 them on the routes that they were on, as far 16 as I know. 17 Q. Did Joe Stewart tell you when he 18 told you you weren't going back to Bells that 19 Adam Alley did not want you back? 20 A. No, sir. 21 Q. All right. Other than what 22 you've told me so far, are there any other 23 reasons that you believe that the decision</p>	<p style="text-align: right;">56</p> <p>1 MR. MORTON: Let's let him answer 2 the question. 3 MR. ROBERSON: Sure. 4 A. I could probably make a general 5 statement about that question, the direct 6 cause was, but I didn't have any problems 7 there on that route. 8 Q. (BY MR. MORTON) So, the only -- 9 okay. So, to clarify, you believe it was 10 your age, because you didn't have any 11 problems up there? 12 A. Yes, sir. 13 Q. And they're not -- you don't have 14 any other facts that support the proposition 15 that your age had anything to do with that 16 decision; is that right? 17 A. The -- that's right, the only 18 reason -- 19 MR. MORTON: Okay. Do you need 20 to talk to him? 21 MR. ROBERSON: No, I don't need 22 to talk. I was just going to -- Terry is a 23 plant salesman. He's not a discrimination</p>

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<p style="text-align: right;">57</p> <p>1 lawyer. But if you want me to wait until you 2 complete your examination, I will. I was 3 just going to ask him a question. He may not 4 know that that suggests age discrimination. 5 I do know that it does. But if you want me 6 to wait -- 7 MR. MORTON: Well, if you want 8 to -- if you want to -- if you want to go 9 ahead and ask him that question, go ahead, 10 because you're entitled to question him at 11 the end of the deposition anyway. 12 MR. ROBERSON: And I think we're 13 all trying to get -- 14 MR. MORTON: I think I know 15 what -- go ahead. 16 17 VOIR DIRE EXAMINATION BY MR. ROBERSON: 18 19 Q. Terry, do you know who replaced 20 you and took your route up in Bells, 21 Tennessee? 22 A. Yes, sir. 23 Q. Who was that?</p>	<p style="text-align: right;">59</p> <p>1 that question. I'm not suggesting he's a bad 2 lawyer. I'm just trying to help you give him 3 the information he's asking for, okay? 4 A. Yes, sir. 5 Q. So, that is one fact that does 6 suggest discrimination, right? 7 A. Right. 8 MR. ROBERSON: Okay. I'm sorry. 9 I didn't mean to steal your thunder. 10 MR. MORTON: No, I understand 11 where you're coming from. 12 13 EXAMINATION BY MR. MORTON: 14 15 Q. Do you know who made the decision 16 for -- what did you say the man's name was 17 that replaced you? 18 A. Les Branum. 19 Q. Les Branum? 20 A. (Witness nods head.) 21 Q. Do you know who made the decision 22 for him to replace you? 23 A. I don't really know who makes</p>
<p style="text-align: right;">58</p> <p>1 A. Les Branum. 2 Q. All right. Do you know how old 3 he is, approximately? I know you don't 4 know -- 5 A. I would say approximately in his 6 thirties. 7 Q. And he's substantially younger 8 than you -- 9 A. Yes, sir. 10 Q. -- is that correct? 11 A. Yes, sir. 12 Q. I know you're not a 13 discrimination lawyer, but it is evidence 14 that can suggest discrimination if a person 15 who replaced you is substantially younger 16 than you. So, you do know that, correct? 17 A. Yes, sir. 18 Q. You know he -- the person that 19 replaced you was substantially younger than 20 you? 21 A. Yes, sir. 22 Q. He's asking you for facts. You 23 were trying to tell him. He didn't ask you</p>	<p style="text-align: right;">60</p> <p>1 those decisions. You know, you just get up 2 one day, and that's what they've decided to 3 do. 4 Q. Okay. And do you have any idea 5 of when that decision was made for him to 6 replace you? 7 A. No, sir. 8 Q. Did he go on the same route that 9 you went, or do you know? 10 A. I heard that they changed those 11 routes up. I hadn't been up there to see. 12 But I heard that they made a lot of changes 13 in that route the next year. 14 Q. What kind of changes? 15 A. They made it shorter and put 16 bigger stores on them, bigger sale stores on 17 them. 18 Q. Who told you that? 19 A. Just looking. I mean, I don't 20 really know that. I just -- that's just 21 hearsay. They had closed a station down. 22 And they changed a lot of routes up there 23 around a lot.</p>

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<p style="text-align: right;">61</p> <p>1 Q. At that particular time?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And when you say they closed a</p> <p>4 station down, what do you mean?</p> <p>5 A. They had a station up there close</p> <p>6 to that one, and the stations were close to</p> <p>7 each other. And they just decided that they</p> <p>8 would close one down and put them into two</p> <p>9 other stations. I don't understand exactly</p> <p>10 what I'm talking about. Joe does that and --</p> <p>11 Q. Did they close the -- did they</p> <p>12 close the station that you worked out of?</p> <p>13 A. No, sir, they kept that one.</p> <p>14 Q. Closed the other one?</p> <p>15 MR. ROBERSON: Restructured it,</p> <p>16 basically?</p> <p>17 THE WITNESS: Restructured it.</p> <p>18 MR. MORTON: Okay.</p> <p>19 Q. Do you know who made that</p> <p>20 decision?</p> <p>21 A. I'm sure it was management of</p> <p>22 Bonnie Plant Farm.</p> <p>23 Q. And do you know how many total</p>	<p style="text-align: right;">63</p> <p>1 Bells, did you work with a fellow named</p> <p>2 Willie Hughes?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Do you know him?</p> <p>5 And he was a driver, was he not?</p> <p>6 A. Yes, sir.</p> <p>7 Q. He's about your age, isn't he?</p> <p>8 A. I think he's younger than I am.</p> <p>9 Q. Pardon?</p> <p>10 A. I think he's younger than I am.</p> <p>11 Q. By what, a couple of years?</p> <p>12 A. I wouldn't know what. I don't</p> <p>13 know what it would be, his birthday is.</p> <p>14 Q. Do you know a fellow named James</p> <p>15 A. Brown --</p> <p>16 A. Yes, sir.</p> <p>17 Q. -- up in Bells?</p> <p>18 Is he close to your age?</p> <p>19 A. Well, he's what -- he's a few</p> <p>20 years younger than I am.</p> <p>21 Q. You knew Johnny Fendelson, right?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Are all three of those guys still</p>
<p style="text-align: right;">62</p> <p>1 route salesmen there were out of the combined</p> <p>2 stations?</p> <p>3 A. No, sir.</p> <p>4 Q. Do you know whether there were</p> <p>5 more or less or the same number --</p> <p>6 A. I don't have --</p> <p>7 Q. -- as there had been?</p> <p>8 A. -- any idea.</p> <p>9 They figured out how the company</p> <p>10 simply can get a truck to all the stores and</p> <p>11 try to get them there in time to sell the</p> <p>12 plants.</p> <p>13 THE WITNESS: If it's okay, I'd</p> <p>14 like to take a restroom break.</p> <p>15 MR. MORTON: Okay. Let's go off</p> <p>16 the record.</p> <p>17</p> <p>18 (Whereupon, a brief recess was</p> <p>19 taken.)</p> <p>20</p> <p>21 MR. MORTON: All right. Back on</p> <p>22 the record.</p> <p>23 Q. Now, when you were working at</p>	<p style="text-align: right;">64</p> <p>1 with the company as far as you know?</p> <p>2 A. As far as I know, they are, yes,</p> <p>3 sir.</p> <p>4 Q. Johnny Fendelson is about your</p> <p>5 age, isn't he?</p> <p>6 A. He's a few years younger than I</p> <p>7 am.</p> <p>8 Q. Isn't he in his early sixties, or</p> <p>9 do you know?</p> <p>10 A. He's probably -- he might be</p> <p>11 sixty. I don't know. He might not be sixty.</p> <p>12 Q. Are you kin to him?</p> <p>13 A. Yes.</p> <p>14 Q. How?</p> <p>15 A. My daddy's his grandmother's</p> <p>16 brother.</p> <p>17 Q. Do you know whether he's still</p> <p>18 with Bonnie?</p> <p>19 A. Yes, sir, he's probably still</p> <p>20 with Bonnie.</p> <p>21 Q. And he was a route salesman like</p> <p>22 you?</p> <p>23 A. Yes, sir.</p>

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<p style="text-align: right;">65</p> <p>1 Q. And are you aware that he's been 2 promoted to where he's running a mini-station 3 now? Did you know that? 4 A. He had said something to me about 5 it. He thought he was going to make a change 6 this year. 7 Q. Is he happy about that? 8 A. He's excited about the 9 opportunity to make more money. It helps his 10 Social Security benefits. It helps his 11 401(k) benefits. 12 Q. I asked you about Mr. James A. 13 Brown. He was a route salesman like you, 14 wasn't he? 15 A. Yes, sir. 16 Q. All right. You said that you 17 ultimately ended up in Donaldsonville, 18 Louisiana, in the February after you didn't 19 go back to Bells. So, that would have been 20 February of '06, right? 21 A. Yes, sir. 22 Q. Who told you to go to 23 Donaldsonville?</p>	<p style="text-align: right;">67</p> <p>1 Q. How were you paid? 2 A. I was paid on a draw. 3 Q. The same draw you've been making 4 everywhere else? 5 A. Yes, sir. And they -- it seemed 6 like they like give the younger people higher 7 draws. And they gave me the lowest draw 8 available. 9 Q. What younger people had higher 10 draws than you? Well, before we go into 11 that, you said seems like. Can you testify 12 under oath that anybody younger than you had 13 a higher draw? 14 A. Oh, yes, sir. 15 Q. All right. Who had a higher 16 draw? 17 A. I wouldn't want to just start 18 naming people, but if you would check 19 records, I think you would find that most of 20 the new people that they started, most of the 21 new people that were there did. 22 Q. What was your draw when you were 23 in Donaldsonville?</p>
<p style="text-align: right;">66</p> <p>1 A. Joe. 2 Q. And what did you do in 3 Donaldsonville? 4 A. Well, I spent a lot of time 5 opening the stores up and went on a route a 6 couple of times for Charlie when he needed to 7 be somewhere else. 8 Q. Now, when you say you spent time 9 opening stores up, what do you mean? 10 A. Going into a new business that 11 wasn't doing business with Bonnie Plant Farm 12 and talk to them about handling Bonnie 13 Product Farm's products. 14 Q. Now, was the idea in 15 Donaldsonville to develop a route down there, 16 a new route? 17 A. I think that -- I don't really 18 know, but I think that they had a lot of 19 chain stores working. And they'd like to get 20 a few more independents in the area to work 21 if they -- but I don't really know. 22 Q. Did you have a route down there? 23 A. No, sir.</p>	<p style="text-align: right;">68</p> <p>1 A. A thousand dollars biweekly. 2 Q. And wasn't that the standard 3 draw, standard biweekly amount, to give to 4 the standard yearly draw? 5 A. I don't know how they did them. 6 I just noticed that mine was usually lower 7 than whoever I was talking to said theirs 8 was. 9 Q. Okay. So, you're basing -- 10 A. Just basing it on hearsay of who 11 I talked to through the company. 12 Q. And those would be other people 13 in your position -- 14 A. Yes, sir. 15 Q. -- have told you that? 16 Nobody in management told you 17 that? 18 A. No, sir. 19 Q. And did you complain to anybody 20 about your draws? 21 A. No, sir. 22 Q. And how long were you in 23 Donaldsonville?</p>

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<p style="text-align: right;">69</p> <p>1 A. I imagine about a month, just a</p> <p>2 guess.</p> <p>3 Q. Where did you go then?</p> <p>4 A. I had a guy that quit a route in</p> <p>5 Jasper, Alabama. I went up to Jasper,</p> <p>6 Alabama.</p> <p>7 Q. All right. Were you told to go</p> <p>8 there or were you asked if you wanted to go</p> <p>9 there?</p> <p>10 A. Well, you know, when your boss</p> <p>11 man tells you something -- have you ever</p> <p>12 worked for anybody? If your boss man tells</p> <p>13 you something, usually, if you want to keep</p> <p>14 your job, you go do it. I mean, Joe's been</p> <p>15 telling me for a lot of years to go do this,</p> <p>16 go do that. So, you know, I don't know how</p> <p>17 you want to --</p> <p>18 Q. Well, did somebody ask you if you</p> <p>19 wanted to go to Jasper or tell you to go to</p> <p>20 Jasper?</p> <p>21 A. They said go to Jasper and run</p> <p>22 this route.</p> <p>23 Q. Who told you that?</p>	<p style="text-align: right;">71</p> <p>1 commission.</p> <p>2 Q. How were you paid?</p> <p>3 A. They just kept sending me my</p> <p>4 biweekly draw.</p> <p>5 Q. Which was a thousand dollars a</p> <p>6 month?</p> <p>7 A. No, sir, a thousand dollars every</p> <p>8 two weeks.</p> <p>9 Q. A thousand dollars every two</p> <p>10 weeks.</p> <p>11 And did that continue year round?</p> <p>12 A. Last year, they stopped sending</p> <p>13 it. Started sending me a -- I don't know how</p> <p>14 much it was, but it come out to me getting</p> <p>15 sixty-five dollars a week. Sixty-five</p> <p>16 thirty-five -- sixty-five dollars every two</p> <p>17 weeks. And then, it started back February</p> <p>18 the 22nd to getting a thousand dollars</p> <p>19 biweekly.</p> <p>20 Q. February 22nd, 2008?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Did your draws typically drop off</p> <p>23 during the off season?</p>
<p style="text-align: right;">70</p> <p>1 A. You know, I don't even -- I don't</p> <p>2 remember.</p> <p>3 Q. Now, by going to Jasper, you had</p> <p>4 your own route rather than just going in and</p> <p>5 working, opening up work in Donaldsonville,</p> <p>6 correct?</p> <p>7 A. Joe told me that he couldn't pay</p> <p>8 me commission, but I could go up there and,</p> <p>9 you know, and work it.</p> <p>10 Q. So, you're telling me you didn't</p> <p>11 get paid any commission for working in</p> <p>12 Jasper?</p> <p>13 A. That's right. They hired a</p> <p>14 younger man to run that route, and they're</p> <p>15 paying him commission. They told me that it</p> <p>16 didn't work out for me up there.</p> <p>17 Q. Okay. But I want to make sure I</p> <p>18 understand. You're telling me that you</p> <p>19 didn't get any commission for running the</p> <p>20 route in Jasper?</p> <p>21 A. No, sir.</p> <p>22 Q. No, sir, you didn't?</p> <p>23 A. No, sir, I did not get any</p>	<p style="text-align: right;">72</p> <p>1 A. My draws had never dropped</p> <p>2 before. I had always gotten more money.</p> <p>3 When you don't -- when you don't get paid</p> <p>4 your normal commission, it costs you money on</p> <p>5 what you're going to draw in Social Security,</p> <p>6 it cost you money on your 401(k), it cost you</p> <p>7 money on -- it's a big, big drawback to you.</p> <p>8 It cuts your unemployment draw when you're --</p> <p>9 through the work force commission when you're</p> <p>10 off. It puts you where it's hard for you to</p> <p>11 pay bills and --</p> <p>12 Q. Now, the year we're talking about</p> <p>13 here is 2006; is that correct?</p> <p>14 A. Yes, sir, when I went to Jasper.</p> <p>15 I never got any --</p> <p>16 MR. MORTON: Let's mark that as</p> <p>17 the first exhibit, please.</p> <p>18</p> <p>19 (Whereupon, Defendant's Exhibit 1</p> <p>20 was marked and copy of same is</p> <p>21 attached hereto.)</p> <p>22</p> <p>23 Q. (BY MR. MORTON) Mr. Watson, let</p>

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<p style="text-align: right;">73</p> <p>1 me show you what's been marked as Defendant's</p> <p>2 Exhibit 1 to your deposition. Now, that's</p> <p>3 what's called a settlement sheet, right?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And this is a settlement sheet</p> <p>6 for you for the spring of 2006, correct?</p> <p>7 A. That's what it's got on here,</p> <p>8 yes, sir.</p> <p>9 Q. And that would have been for the</p> <p>10 period that you were working in Jasper,</p> <p>11 correct?</p> <p>12 A. The way they pay, it's hard to</p> <p>13 keep up with what they're paying for.</p> <p>14 Q. Well, can you tell me one way or</p> <p>15 the other whether or not this is your</p> <p>16 settlement sheet for the spring of 2006?</p> <p>17 A. This is the first time I have</p> <p>18 looked at this. And I don't see where</p> <p>19 they -- they've got it dated 23rd of August</p> <p>20 of '07. And this is the first time I have</p> <p>21 seen this piece of paper.</p> <p>22 Q. And it's your testimony, you have</p> <p>23 not seen Defendant's Exhibit 1 before, Mr.</p>	<p style="text-align: right;">75</p> <p>1 proper --</p> <p>2 Q. Have you seen another settlement</p> <p>3 sheet for the spring of 2006?</p> <p>4 A. No, sir, this is the only one</p> <p>5 I've ever seen right here.</p> <p>6 MR. MORTON: Let's make that 2 if</p> <p>7 we could.</p> <p>8</p> <p>9 (Whereupon, Defendant's Exhibit 2</p> <p>10 was marked and copy of same is</p> <p>11 attached hereto.)</p> <p>12</p> <p>13 Q. (BY MR. MORTON) Let me show you</p> <p>14 Defendant's Exhibit 2, which is a document</p> <p>15 which you and your lawyer gave me today. And</p> <p>16 I believe those are your W-2 forms from</p> <p>17 Alabama Farmers for 2006; is that correct?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And, in fact, is it correct, it's</p> <p>20 reflected on there that Alabama Farmers paid</p> <p>21 you somewhere north of thirty-eight thousand</p> <p>22 dollars during 2006?</p> <p>23 A. On that, that was the settlement</p>
<p style="text-align: right;">74</p> <p>1 Watson?</p> <p>2 A. No, sir, this is my first time to</p> <p>3 see this. And I'm not sure -- I don't really</p> <p>4 know. I see where we've got fines of</p> <p>5 fourteen hundred and fifty dollars. I don't</p> <p>6 know what that would be from.</p> <p>7 Q. You don't know what a chain store</p> <p>8 skip fine is?</p> <p>9 A. I didn't skip them.</p> <p>10 Q. How many helpers did you have on</p> <p>11 this route?</p> <p>12 A. I had two.</p> <p>13 Q. And you paid them eleven</p> <p>14 thousand, two hundred and thirty-two dollars?</p> <p>15 A. See, I wouldn't know, because</p> <p>16 that labor must include something other than</p> <p>17 time. I mean, this -- this looks like some</p> <p>18 kind of prorated something. But I don't know</p> <p>19 how they prorate it.</p> <p>20 Q. Do you know whether it's accurate</p> <p>21 or not?</p> <p>22 A. No, sir, I haven't -- I mean,</p> <p>23 I -- it appears -- it doesn't appear to be a</p>	<p style="text-align: right;">76</p> <p>1 from Tennessee. And the settlement, we got a</p> <p>2 copy of that from some fall business that I</p> <p>3 had worked. That wasn't a settlement from</p> <p>4 the year of 2006 on this -- on this return.</p> <p>5 MR. ROBERSON: In other words,</p> <p>6 the income trails them a year, if that makes</p> <p>7 any sense.</p> <p>8 Q. (BY MR. MORTON) So, the wages on</p> <p>9 there were paid to you when?</p> <p>10 A. I'm sure it was paid in 2006.</p> <p>11 Q. All right.</p> <p>12 A. But for what -- do you have the</p> <p>13 settlement sheet for this year?</p> <p>14 MR. ROBERSON: But the work was</p> <p>15 done in 2005?</p> <p>16 THE WITNESS: Yes, sir.</p> <p>17 MR. MORTON: Well, I'll tell you</p> <p>18 what, let's let him answer the questions,</p> <p>19 okay?</p> <p>20 Q. Are you saying that the work was</p> <p>21 done in 2005?</p> <p>22 A. Yes, sir, the work was done in</p> <p>23 the prior time.</p>

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<p style="text-align: right;">77</p> <p>1 Q. Now --</p> <p>2 A. You should have a settlement</p> <p>3 statement for that, just like this one</p> <p>4 (indicating), that shows that.</p> <p>5 Q. Okay. Well, the first thing I</p> <p>6 need to know is, is it your sworn testimony</p> <p>7 that Defendant's Exhibit Number 1, that</p> <p>8 settlement sheet, is not accurate?</p> <p>9 A. That settlement sheet is from</p> <p>10 money earned the prior -- in prior years.</p> <p>11 Q. The settlement sheet that's</p> <p>12 marked Defendant's Exhibit 1?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And it is not an accurate</p> <p>15 statement of what you earned in the spring of</p> <p>16 2006?</p> <p>17 A. No, sir.</p> <p>18 Q. Now, at the end of 2006, were</p> <p>19 you -- had you received more in draws than</p> <p>20 you had earned in commission?</p> <p>21 A. I have no way of knowing, because</p> <p>22 I've seen no paperwork.</p> <p>23 Q. You never saw a settlement</p>	<p style="text-align: right;">79</p> <p>1 allow your insurance coverage to lapse?</p> <p>2 A. No, sir.</p> <p>3 Q. And do you know -- and you're</p> <p>4 responsible for paying for part of that</p> <p>5 insurance --</p> <p>6 A. Yes, sir.</p> <p>7 Q. -- are you not?</p> <p>8 And do you know whether or not</p> <p>9 that's the reason your draw was reduced?</p> <p>10 A. No, sir, I never knew that was</p> <p>11 the reason my draw was reduced.</p> <p>12 Q. Did you ever ask anybody why your</p> <p>13 draw was reduced?</p> <p>14 A. Yes.</p> <p>15 Q. Who did you ask?</p> <p>16 A. I asked Joe Stewart, I asked Jeff</p> <p>17 Seymour.</p> <p>18 Q. Anybody else?</p> <p>19 A. I can't think of anybody else</p> <p>20 that I would have asked.</p> <p>21 Q. All right. What did Joe Stewart</p> <p>22 tell you?</p> <p>23 A. He said that I didn't have enough</p>
<p style="text-align: right;">78</p> <p>1 sheet --</p> <p>2 A. No, sir.</p> <p>3 Q. -- for 2006?</p> <p>4 A. No, sir.</p> <p>5 Q. Do you know what you made in the</p> <p>6 spring of 2006? Do you know, rather -- let</p> <p>7 me withdraw that.</p> <p>8 Do you know what your total sales</p> <p>9 were in the spring of 2006?</p> <p>10 A. No, sir. I tried to track them.</p> <p>11 And I was gone before the -- got the final</p> <p>12 rebates and the final -- and the final sales.</p> <p>13 Q. When you say you were gone, what</p> <p>14 do you mean?</p> <p>15 A. I was -- I had -- I had gotten</p> <p>16 off from work.</p> <p>17 Q. Why had you gotten off from work?</p> <p>18 A. The season had ended.</p> <p>19 Q. And what did you do then?</p> <p>20 A. See, when the season ends, you</p> <p>21 don't necessarily have your complete sales</p> <p>22 in. You don't have all --</p> <p>23 Q. All right. Did the company ever</p>	<p style="text-align: right;">80</p> <p>1 commission. Didn't have enough sales.</p> <p>2 Q. Didn't have enough sales to</p> <p>3 support the draw?</p> <p>4 A. Yes, sir.</p> <p>5 Q. What did you say to that?</p> <p>6 A. I just took it as an answer. And</p> <p>7 I can't remember who I -- I think I asked</p> <p>8 Jeff Seymour for my paperwork and never got</p> <p>9 it.</p> <p>10 Q. Did you ask Jeff why your draw</p> <p>11 was reduced?</p> <p>12 A. Yes, sir.</p> <p>13 Q. What did he say?</p> <p>14 A. He said he'd get around to</p> <p>15 settling up or something. But it's always --</p> <p>16 it's always a problem, you know, getting</p> <p>17 settlement sheets and ended up getting the</p> <p>18 settlement sheets.</p> <p>19 Q. You mean, it's always been like</p> <p>20 that since you've worked with the company?</p> <p>21 A. When I worked for Joe Stewart, it</p> <p>22 wasn't no problem. Since I went to work for</p> <p>23 Bonnie Plant Farm, it was.</p>

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<p style="text-align: right;">81</p> <p>1 Q. Do you have any reason to believe</p> <p>2 that Joe Stewart was not telling you the</p> <p>3 truth when he told you that you did not have</p> <p>4 sufficient --</p> <p>5 A. No, sir.</p> <p>6 Q. -- sales to support the draw?</p> <p>7 A. I had no -- I had -- I had no</p> <p>8 reason at all.</p> <p>9 Q. All right. Do you have any</p> <p>10 reason now to believe he wasn't telling the</p> <p>11 truth?</p> <p>12 A. No, sir, I just haven't seen it.</p> <p>13 And I don't really -- we're showing no</p> <p>14 Wal-Mart increases. I don't know about that.</p> <p>15 I don't know about -- I just don't know about</p> <p>16 some of the things that I see on here.</p> <p>17 Q. You just don't know whether</p> <p>18 they're accurate or not?</p> <p>19 A. Yes, sir, I just don't know.</p> <p>20 Q. All right. Is there any</p> <p>21 particular thing on Exhibit 1 that you can</p> <p>22 tell me that's not accurate?</p> <p>23 A. No, sir, but I can tell you that</p>	<p style="text-align: right;">83</p> <p>1 complete -- to complete the route.</p> <p>2 Q. Well, the answer to the question</p> <p>3 is what?</p> <p>4 A. Sir?</p> <p>5 Q. The answer to the question is</p> <p>6 what? Was it an opportunity for you to make</p> <p>7 more money or not?</p> <p>8 A. No, sir, it wasn't an opportunity</p> <p>9 to make more money. It was a -- I was on a</p> <p>10 set draw.</p> <p>11 Q. Had you ever been in that</p> <p>12 situation before?</p> <p>13 A. No, sir.</p> <p>14 Q. Are you aware of other people in</p> <p>15 the company who have done that?</p> <p>16 A. No, sir.</p> <p>17 Q. Now, after you worked your year</p> <p>18 in Jasper -- by the way, who did you work for</p> <p>19 up there?</p> <p>20 A. Joey Padgett.</p> <p>21 Q. How did you and Mr. Padgett get</p> <p>22 along?</p> <p>23 A. As far as I know, we got along</p>
<p style="text-align: right;">82</p> <p>1 you'd have to go in and check Wal-Mart sales,</p> <p>2 Lowe's sales, Home Depot sales to see about</p> <p>3 those one percents. And those one percents,</p> <p>4 they add up on your -- on your total when you</p> <p>5 qualify for them.</p> <p>6 Q. But you don't know whether you</p> <p>7 qualified for those or not?</p> <p>8 A. No, sir, I don't.</p> <p>9 Q. All right. Your first year in</p> <p>10 Bells, did you not have a lower total sales</p> <p>11 amount than had been on that route the year</p> <p>12 before?</p> <p>13 A. I had never been told.</p> <p>14 Q. Okay. So, you don't know the</p> <p>15 answer to that?</p> <p>16 A. So, I don't know the answer to</p> <p>17 that.</p> <p>18 Q. Okay. Now, when you went to</p> <p>19 Jasper, when you were sent to Jasper, wasn't</p> <p>20 that an opportunity to make more money than</p> <p>21 you were making in Donaldsonville?</p> <p>22 A. Joe told me that he couldn't pay</p> <p>23 me commission. So, I went to Jasper to</p>	<p style="text-align: right;">84</p> <p>1 all right.</p> <p>2 Q. Did he ever criticize your work</p> <p>3 or any aspect of your work?</p> <p>4 A. No, sir.</p> <p>5 Q. Anybody else in Jasper</p> <p>6 criticize --</p> <p>7 A. No, sir.</p> <p>8 Q. -- your work?</p> <p>9 Now, how long was your route up</p> <p>10 there in Jasper compared to the other routes</p> <p>11 being run in that area?</p> <p>12 A. I had one of the longer routes.</p> <p>13 Q. And did you have an air ride seat</p> <p>14 in Jasper?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And an air ride suspension?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And how many helpers did you have</p> <p>19 in Jasper?</p> <p>20 A. I had two.</p> <p>21 Q. The whole time you were there?</p> <p>22 A. Yes, sir, the whole time I was</p> <p>23 there.</p>

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<p style="text-align: right;">85</p> <p>1 Q. And who paid for those since you 2 weren't getting commission? 3 A. I don't know where they took the 4 pay out of. 5 Q. Who were the helpers? 6 A. Quinton something was one of them 7 and Michael something was the other one. 8 Q. Did you pick them? 9 A. No, sir. 10 Q. Did you inherit them? 11 A. Yes, sir. 12 Q. Did they do a good job? 13 A. Yes, sir. 14 Q. Did you decide how much their 15 draw was going to be? 16 A. No, sir. 17 Q. Who did? 18 A. Well, whoever they was working 19 for before I got there. They were hourly 20 employees. 21 Q. When you were in Bells, working 22 in Bells, did you ever tell anybody that you 23 were only working for your insurance</p>	<p style="text-align: right;">87</p> <p>1 maintain my 401(k), and maintain my income. 2 Q. Okay. 3 A. That's the reason I work. 4 Q. Did you ever tell anybody, other 5 than Butch, that you were working for 6 insurance coverage? 7 A. Yes, sir, I probably have said 8 that. 9 Q. Do you remember who else you told 10 that? 11 A. No, sir. 12 Q. Now, when you were working in 13 south Alabama, did you -- I'm sorry, in south 14 Louisiana, working out of what, Texas? 15 MR. MORTON: What was it? 16 MR. ROBERSON: New Summerfield, 17 Texas. 18 Q. (BY MR. MORTON) New Summerfield, 19 Texas, did you ever sell any plants for cash 20 and keep the money while you were running 21 that route for Bonnie? 22 A. No, sir. 23 Q. When you were working in Bells,</p>
<p style="text-align: right;">86</p> <p>1 coverage? 2 A. No, sir. 3 Q. Have you ever told anybody that? 4 A. Yes, sir. 5 Q. Who'd you tell? 6 A. I don't know. I mentioned -- I 7 mean, I told Butch that one of the most 8 important things for me to do was to keep my 9 insurance coverage until I was sixty-five, 10 because it would be hard for me to get 11 insurance anywhere else because of my age. 12 Q. You told Butch that? 13 A. Yes, sir, and I probably told 14 some other people that, but I just don't 15 remember making an all-out statement saying 16 that. 17 Q. Well, is it true that you have 18 continued to work since you started working 19 in Bells in order to ensure that you do have 20 insurance? 21 A. That's one of the main reasons 22 that I have worked, is to maintain my 23 insurance, maintain my Social Security,</p>	<p style="text-align: right;">88</p> <p>1 did you ever sleep in the truck while your 2 helper worked the store? 3 A. I probably propped my feet up 4 because -- to keep the circulation in my 5 feet. 6 Q. Okay. Did you go to sleep? 7 A. I don't remember ever going to 8 sleep. 9 Q. How often did you sit in the 10 truck while the helper worked the store? 11 A. It depended on the size of the 12 store we were at. If we was somewhere where 13 we put a lot of plants, needed help, I was 14 out there putting plants. If we were parked 15 in a parking lot out of town where you 16 couldn't -- needed to move to let people in 17 and out of parking places and things like 18 that, I stayed in. 19 Q. Is that a common occurrence, for 20 you to stay in the truck while your helper 21 worked the store? 22 A. No, sir. 23 Q. Had it ever happened when you</p>

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<p style="text-align: right;">89</p> <p>1 were working in Jasper?</p> <p>2 A. No, sir.</p> <p>3 Q. Did it ever happen when you were</p> <p>4 working in Donaldsonville?</p> <p>5 A. No, sir.</p> <p>6 Q. You're now working in Beeville,</p> <p>7 Texas; is that right?</p> <p>8 A. Yes, sir. But I have --</p> <p>9 Q. Anything happen out there?</p> <p>10 A. No, sir.</p> <p>11 Q. So, the only place where you ever</p> <p>12 stayed in the car while your helper worked</p> <p>13 the store was Bells; is that right?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And your helper at that time was</p> <p>16 a fellow named Michael Rhodes?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Did Michael also do the driving</p> <p>19 for you?</p> <p>20 A. No, sir.</p> <p>21 Q. Did he do some of it?</p> <p>22 A. No, sir.</p> <p>23 Q. Never drove the truck?</p>	<p style="text-align: right;">91</p> <p>1 running now.</p> <p>2 Q. So, you didn't make any</p> <p>3 arrangements to have anybody cover it on</p> <p>4 Saturday, correct?</p> <p>5 A. No, sir. I had --</p> <p>6 Q. And, in fact, you had not even</p> <p>7 told -- did not even tell Chris until Sunday</p> <p>8 that you weren't going to be there running</p> <p>9 the route; is that right?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And did you run the route Friday?</p> <p>12 A. Yes, sir.</p> <p>13 Q. All of it?</p> <p>14 A. No, sir.</p> <p>15 Q. How much of it?</p> <p>16 A. I don't know how you would count</p> <p>17 it. I think I worked about seven stores</p> <p>18 Friday, just off the wall guess.</p> <p>19 Q. Just what?</p> <p>20 A. I think about seven stores</p> <p>21 Friday, just off the wall guess.</p> <p>22 Q. Is that fewer stores than you</p> <p>23 normally would run in a day?</p>
<p style="text-align: right;">90</p> <p>1 A. No, sir.</p> <p>2 Q. Have you ever been told that</p> <p>3 customers called in and complained that you</p> <p>4 were sleeping in the truck?</p> <p>5 A. No, sir.</p> <p>6 Q. If that were the case, would it</p> <p>7 be true?</p> <p>8 A. No, sir.</p> <p>9 Q. When did you leave Beeville to</p> <p>10 come here for your deposition?</p> <p>11 A. Friday afternoon.</p> <p>12 Q. And who's your station manager</p> <p>13 out there?</p> <p>14 A. Chris Hall.</p> <p>15 Q. And when did you tell Chris you</p> <p>16 were coming here?</p> <p>17 A. Sunday afternoon.</p> <p>18 Q. After you were already here?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Did you make any arrangements for</p> <p>21 anybody to run your route on Saturday?</p> <p>22 A. I had the route in shape for the</p> <p>23 weekend. And the route probably needs</p>	<p style="text-align: right;">92</p> <p>1 A. Depends on where you were and</p> <p>2 what time you left and --</p> <p>3 Q. What time did you knock off on</p> <p>4 Friday?</p> <p>5 A. Around lunchtime.</p> <p>6 Q. Normally, this time of year, what</p> <p>7 time do you work to in the evening?</p> <p>8 A. It depends on what day it is,</p> <p>9 whether I'm loaded or not.</p> <p>10 Q. You don't normally knock off</p> <p>11 around lunchtime, do you?</p> <p>12 A. On a lot of Fridays, I do. That</p> <p>13 route down there has slowed down. It's a</p> <p>14 February, March route. And on that route, it</p> <p>15 would be normal to knock off right at lunch.</p> <p>16 Q. How many times have you done that</p> <p>17 this year?</p> <p>18 A. I don't know.</p> <p>19 Q. And --</p> <p>20 A. A lot of times --</p> <p>21 Q. I guess, there would be time</p> <p>22 records --</p> <p>23 A. -- you would load on Friday</p>

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<p style="text-align: right;">93</p> <p>1 afternoon and --</p> <p>2 Q. There would be time records for</p> <p>3 your helpers, wouldn't there?</p> <p>4 A. Yes, sir.</p> <p>5 Q. How many helpers are you using on</p> <p>6 that route?</p> <p>7 A. One now. I used two to help set</p> <p>8 up the racks and get the route set up.</p> <p>9 Q. Is that a short run?</p> <p>10 A. No, sir, that's an unordinarily</p> <p>11 long route. They --</p> <p>12 Q. Who sent you to Beeville?</p> <p>13 A. Joe Stewart.</p> <p>14 Q. Did he tell you why?</p> <p>15 A. He said that was the only place</p> <p>16 he could find for me to work because of my</p> <p>17 age.</p> <p>18 Q. Did he tell you it was because of</p> <p>19 your age?</p> <p>20 A. That's what he kindly insinuated.</p> <p>21 Q. How's that?</p> <p>22 A. He thought, I think -- you know,</p> <p>23 you hate -- you hate to say what you think</p>	<p style="text-align: right;">95</p> <p>1 conversation?</p> <p>2 A. I don't recall anything else.</p> <p>3 Q. Did you have any conversations</p> <p>4 about why you weren't going back to Jasper?</p> <p>5 A. He told me it didn't work out up</p> <p>6 there for me.</p> <p>7 Q. Did he tell you why?</p> <p>8 A. He kindly insinuated it was</p> <p>9 because of my age.</p> <p>10 Q. And how did he do that?</p> <p>11 A. He had hired a younger man to run</p> <p>12 that route up there.</p> <p>13 Q. Who is that?</p> <p>14 A. I don't know.</p> <p>15 Q. Who told you that a younger man</p> <p>16 had been hired to run that route?</p> <p>17 A. Nobody. I've just never seen</p> <p>18 them hire anybody in my age limits. I've</p> <p>19 never seen them hire a routeman my age. So,</p> <p>20 you would figure that it would have been a</p> <p>21 younger person.</p> <p>22 Q. Okay. So, that is speculation on</p> <p>23 your part? You don't know one way or the</p>
<p style="text-align: right;">94</p> <p>1 somebody's thinking --</p> <p>2 Q. Right.</p> <p>3 A. -- you know.</p> <p>4 I don't really know what the man</p> <p>5 was thinking. I told you what I thought.</p> <p>6 He's sitting there. Ask him.</p> <p>7 Q. Well, I'm asking you at this</p> <p>8 point. And you're telling me that you're</p> <p>9 believing that your going to Beeville had</p> <p>10 something to do with your age is based purely</p> <p>11 on what you thought Joe was thinking?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Not on anything he said?</p> <p>14 A. No, sir.</p> <p>15 Q. What conversations did you and he</p> <p>16 have about your going to Beeville?</p> <p>17 A. He told me that was the only</p> <p>18 place he had for me.</p> <p>19 Q. Well, is that the entirety of</p> <p>20 your conversation?</p> <p>21 A. That's the basis of it.</p> <p>22 Q. Was there anything else said by</p> <p>23 you or anything else said by him in that</p>	<p style="text-align: right;">96</p> <p>1 other?</p> <p>2 A. Well, from what I've seen with</p> <p>3 the company, I mean, I've never seen them</p> <p>4 hire a routeman my age.</p> <p>5 Q. Okay. But you don't know who was</p> <p>6 running that route, do you?</p> <p>7 A. I have no idea.</p> <p>8 Q. Or how old that person is?</p> <p>9 A. No, sir.</p> <p>10 Q. Did Mr. Stewart do anything else</p> <p>11 to insinuate that the reason you weren't sent</p> <p>12 back up there was because of your age? Or,</p> <p>13 rather, since you don't know who was running</p> <p>14 that route, did he do anything to insinuate</p> <p>15 that it was your age or your age had anything</p> <p>16 to do with the decision not to send you back</p> <p>17 up there?</p> <p>18 A. That was the only thing that I</p> <p>19 could figure.</p> <p>20 Q. The only reason you could figure</p> <p>21 was because of your age?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Okay. Have you told me all of</p>

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<p style="text-align: right;">97</p> <p>1 the reasons that you believe that decision 2 was based on your age? 3 A. For some reason, it's important 4 that I make less money, that I have less to 5 go into my 401(k), I have less money to pay 6 my bills with. And I guess he figures 7 because I'm older, it don't cost as much for 8 me to live. 9 Q. And all of that is speculation on 10 your part, correct? 11 A. From what I've been told and see. 12 Q. Well, what have you been told 13 that leads you to that belief? 14 A. I've been told that they never 15 had heard of anybody -- moving somebody off 16 of a route that made a good increase on it 17 and was doing a good job on it. 18 Q. Who told you that? 19 A. Comer Lee Phillips. 20 Q. C-o-m-e-r? 21 A. Yes, sir. 22 Q. And who is he? 23 A. He's an employee with Bonnie. I</p>	<p style="text-align: right;">99</p> <p>1 Q. So, you're not sure when it was 2 made? 3 A. No, sir. 4 Q. Did you tell Mr. Stewart when he 5 sent you to Beeville that you were glad to 6 get the work? 7 A. Yes, sir. 8 Q. And did you tell -- 9 A. I'm thankful for the time that I 10 spent working for Joe. 11 Q. Did you tell Mr. Stewart when he 12 sent you to Donaldsonville that you were glad 13 to get the work? 14 A. Yes, sir. 15 Q. Did you tell Tim Trussell that? 16 A. Yes, sir. 17 Q. On both occasions? 18 A. Yes, sir. 19 Q. Other than what you've told me, 20 are there any other facts on which you base 21 your belief that any decision Bonnie or 22 Alabama Farmers has made about you is based 23 on your age?</p>
<p style="text-align: right;">98</p> <p>1 don't know what -- 2 Q. Is he a route salesman? 3 A. I don't really know what his -- I 4 don't really know what his position with the 5 company is at this time. 6 Q. Do you know what his position was 7 at the time he made the statement to you? 8 A. He went around checking on 9 growing stations and checking on stores to be 10 sure people had everything in the store they 11 needed. I don't really know what all he did. 12 Q. Did he say anything about your 13 age? 14 A. I don't recall him saying 15 anything about it. 16 Q. When did he make that statement 17 to you about he didn't know about anybody 18 else that had been pulled off a route after 19 they had made an increase and done a good 20 job? 21 A. He just made it in general one 22 day up there at -- I can't remember if it was 23 in Bells or Beeville.</p>	<p style="text-align: right;">100</p> <p>1 A. Would you mind repeating that 2 question? 3 Q. I'll be glad to. 4 Other than what you've told me, 5 are there any other facts that you believe 6 support the proposition that Bonnie or AFC 7 has discriminated against you on the basis of 8 your age? 9 A. I don't see them hiring people my 10 age. They hire a lot of people every year, 11 and I don't see people my age in the same job 12 that I'm in. I see younger people but not my 13 age. And that's basically what I have to say 14 about it, I guess. 15 Q. You don't know of any other facts 16 that support the proposition that you've been 17 discriminated against on the basis of your 18 age, other than that and what you previously 19 told me in this deposition? 20 A. It appears that when I made my 21 complaint, I made my complaint in the wide 22 open to them. They did harm to me behind 23 closed doors, and then, took -- brought me in</p>

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<p style="text-align: right;">101</p> <p>1 later. And when I made my complaint, it 2 appears that the company would have had 3 somebody to have sat down and talked with me 4 about my problems and try to help me with 5 them. 6 Q. Okay. Well, and you said you 7 don't see the company hiring people your age. 8 Do you know of anybody your age who's been 9 turned down for a job with the company in 10 your position? 11 A. Not right offhand, I don't. 12 Q. So, you don't know anything about 13 the pool of applicants that the company 14 has -- 15 A. I don't know. 16 Q. -- to choose from, correct? 17 A. No, sir. 18 Q. Correct? 19 A. That's correct. That's correct. 20 That's correct. I'm sorry. 21 Q. That's all right. 22 Now, you said that the company 23 should have sat down with you and talked to</p>	<p style="text-align: right;">103</p> <p>1 there discussing what he had decided to do 2 with me. And, you know, no reason was given 3 to why he had decided to do that. 4 Q. Okay. But you didn't ask him, 5 did you? 6 A. No, sir. 7 Q. And, in fact, he's the general 8 sales manager for the company, isn't he? 9 A. Yes, sir. 10 Q. And it is his job to decide where 11 to send people, isn't it? 12 A. Yes, sir. I've never doubted 13 what he's told me. I've always gone to work 14 when he said go to work, and I've always 15 tried to do a good job. 16 Q. I mean, you really honestly don't 17 believe that Joe Stewart has discriminated 18 against you because of your age? 19 A. Yes, sir. 20 MR. MORTON: Let's take a break 21 for a minute. 22 23 (Whereupon, a brief recess was</p>
<p style="text-align: right;">102</p> <p>1 you about your problems and tried to help you 2 with them. What problems are those, Mr. 3 Watson? 4 A. Nobody ever discussed with me the 5 problems that I had staying on my routes. 6 Nobody ever discussed with me why I had to go 7 down to Beeville, Texas. I just had very 8 little rapport to no rapport from them to 9 help me see how devastating this treatment 10 has been to me. I think that they should 11 double the damages that I have lost and -- 12 and that's basically how I feel. 13 Q. Well, going back to nobody ever 14 talked to you about the problems. Did you 15 ask anybody to talk to you about the 16 problems? 17 A. I wrote a letter. 18 Q. Well, you had several face-to- 19 face conversations, you've told me about, 20 with Mr. Stewart. In any of those 21 conversations, did you ask him to discuss any 22 problems with you? 23 A. No, sir. We were sitting in</p>	<p style="text-align: right;">104</p> <p>1 taken.) 2 3 (Whereupon, Defendant's Exhibit 3 4 was marked and copy of same is 5 attached hereto.) 6 7 Q. (BY MR. MORTON) Mr. Watson, let 8 me ask you to look at -- 9 MR. ROBERSON: I don't think 10 Terry's seen it. So, he might need to look 11 at it a minute. 12 Q. (BY MR. MORTON) Let me ask you 13 to take a look at Exhibit 3 to your 14 deposition, Mr. Watson. Now, that is the 15 settlement sheet for the spring of 2007 for 16 you. Have you seen it before? 17 A. No, sir. 18 Q. Do you know whether or not it's 19 accurate? 20 A. No, sir, but I would -- you know, 21 I wouldn't say that it was. 22 Q. I'm sorry? 23 A. No, sir, I don't know.</p>

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1 MR. MORTON: Let's go off the
2 record for a second.
3
4 (Whereupon, a discussion was held
5 off the record.)
6
7 MR. MORTON: Okay. Are you ready
8 to go back on the record?
9 Q. Mr. Watson, I believe I'd asked
10 you if you knew whether or not the settlement
11 sheet for the spring of 2007, what's in
12 Exhibit 3, was accurate. And I don't know
13 whether your answer was recorded or not.
14 A. This appears to be a -- to be on
15 target to being correct.
16 Q. All right. And at the end of the
17 year, in 2007, you ended up, shall we say,
18 upside down, correct?
19 A. Yes, sir.
20 Q. You had received more in draws --
21 A. Yes, sir.
22 Q. -- than you had earned in
23 commissions?

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1 A. Yes, sir.
2 Q. And you continued to receive
3 draws after this document was issued; is that
4 right?
5 A. Yes, sir. I hadn't seen this
6 document.
7 Q. Okay. But you continued to
8 receive draws after February 29th, 2008,
9 right?
10 A. I started receiving draws
11 February the 22nd, back --
12 Q. All right.
13 A. No. My draw was cut. It was
14 drastically cut prior to this.
15 Q. Now, was your draw drastically
16 cut in 2006 and 2007, after the season?
17 A. No, sir. Yes, sir, 2006.
18 Q. And 2007?
19 A. And part of 2000 -- wait. What
20 year are we in now?
21 Q. 2008.
22 A. 2007, it was drastically cut.
23 Q. Okay.

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1 A. And part of 2008.
2 Q. Beg your pardon?
3 A. And part of 2008.
4 Q. Okay. But it was not reduced in
5 2006?
6 A. No, sir.
7 Q. Okay.
8 A. It was not reduced in 2006.
9 Q. All right. And then, you
10 inquired about why your draw had been
11 reduced?
12 A. Yes, sir.
13 Q. And you've already described
14 those conversations for me, correct?
15 A. Yes, sir.
16 Q. Okay. All right. Now, if this
17 document is accurate, and you said you think
18 it looks like it probably is, it ends up with
19 you owing the company somewhere around ten
20 thousand dollars, correct?
21 A. It shows me owing how much?
22 Q. Owing seven thousand, seven
23 hundred and three seventy-five plus the

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1 remaining advances of twenty-five hundred
2 dollars.
3 A. I didn't understand exactly like
4 that, but that's the first time I've ever
5 gotten one of these that I was in the hole.
6 Nobody's ever explained to me really how it
7 works and what goes on. I've never been in
8 this situation before.
9 Q. So, you're not sure how it
10 operates?
11 A. So, I'm not sure how it operates.
12 Q. All right. Well, you do know,
13 though, that the company is not -- the
14 company has not tried to recover any of the
15 money that's shown as a negative balance on
16 here from you? You do know that, don't you?
17 A. Yes, sir.
18 Q. And you do know that the company
19 has kept your health insurance in force?
20 A. Yes, sir.
21 Q. Despite the fact --
22 A. Despite the fact --
23 Q. -- that you ended up upside down?

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<p style="text-align: right;">109</p> <p>1 A. Yes, sir.</p> <p>2 Q. I'm sorry. I think I may have</p> <p>3 asked you this. When did you find out that</p> <p>4 you were not going back to Bells?</p> <p>5 A. Just a guess, November the 2nd.</p> <p>6 I mean, on election day. I don't remember if</p> <p>7 it was November -- in November of --</p> <p>8 Q. Of 2005?</p> <p>9 A. Yes, sir.</p> <p>10 MR. MORTON: Okay. Let's mark</p> <p>11 this as the next exhibit if we could.</p> <p>12</p> <p>13 (Whereupon, Defendant's Exhibit 4</p> <p>14 was marked and copy of same is</p> <p>15 attached hereto.)</p> <p>16</p> <p>17 MR. ROBERSON: Dent, I believe</p> <p>18 you couldn't have produced this. It wasn't</p> <p>19 FAXed until the 24th.</p> <p>20 MR. MORTON: I think I already</p> <p>21 had a copy of it.</p> <p>22 MR. ROBERSON: Oh, okay.</p> <p>23 MR. MORTON: I think it has been</p>	<p style="text-align: right;">111</p> <p>1 to see what the reaction was going to be,</p> <p>2 because I was -- had confidence and was</p> <p>3 hoping the whole time that my route situation</p> <p>4 would be straightened out.</p> <p>5 Q. All right. And what lawyer did</p> <p>6 you have at that time?</p> <p>7 A. Albert Adams, who is my cousin.</p> <p>8 And we were --</p> <p>9 Q. Now, let me caution you. I'm not</p> <p>10 entitled to know what you and Mr. Adams</p> <p>11 talked about, okay? So, you don't want to</p> <p>12 tell me that, and I'm not going to ask you</p> <p>13 that, okay?</p> <p>14 MR. ROBERSON: He's not going to</p> <p>15 solicit that information. So, don't tell</p> <p>16 him.</p> <p>17 Q. (BY MR. MORTON) Okay. Who</p> <p>18 actually composed this letter?</p> <p>19 A. His secretary typed it up.</p> <p>20 Q. And did she compose it? Was she</p> <p>21 responsible for what it said?</p> <p>22 A. I was responsible for some of it,</p> <p>23 and I'm sure Albert was responsible for some</p>
<p style="text-align: right;">110</p> <p>1 produced. If it hadn't, I apologize.</p> <p>2 Q. Mr. Watson, let me show you</p> <p>3 Exhibit Number 4 to your deposition. Now, is</p> <p>4 that a letter that you wrote to Tate Gatlin?</p> <p>5 A. Well, yes, sir.</p> <p>6 Q. At the time you wrote that letter</p> <p>7 to Tate Gatlin, you already knew that you</p> <p>8 were not going back to Bells, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And prior to the date on this</p> <p>11 letter, January 10th, 2006, you had not</p> <p>12 complained to anybody about age</p> <p>13 discrimination; is that right?</p> <p>14 A. No, sir.</p> <p>15 Q. Who had you complained to?</p> <p>16 A. I had not.</p> <p>17 Q. You had not. Okay.</p> <p>18 Now, at the time that you wrote</p> <p>19 this letter, Watson 4, did you already have</p> <p>20 counsel? Did you already have a lawyer to</p> <p>21 represent you?</p> <p>22 A. At this time, you could say yes</p> <p>23 or no. I probably did. We were just waiting</p>	<p style="text-align: right;">112</p> <p>1 things that was said.</p> <p>2 Q. All right. And then, you signed</p> <p>3 it?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Now, did you mail it to Mr.</p> <p>6 Gatlin or did you hand it to him?</p> <p>7 A. I physically handed it to him and</p> <p>8 asked him to hand a copy to Joe. I wanted to</p> <p>9 be sure that Joe got it. Joe wasn't in the</p> <p>10 office at the time that I went in.</p> <p>11 Q. Now, Mr. Gatlin was not your</p> <p>12 supervisor, correct?</p> <p>13 A. Mr. Gatlin is the safety</p> <p>14 director.</p> <p>15 Q. Right. And he was -- he was not</p> <p>16 your supervisor, right?</p> <p>17 A. No, sir, he was not my</p> <p>18 supervisor.</p> <p>19 Q. Did you have any conversation</p> <p>20 with him about your situation when you handed</p> <p>21 this letter to him?</p> <p>22 A. I just told him that I was being</p> <p>23 put on another route and that I was trying to</p>

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<p style="text-align: right;">113</p> <p>1 keep my job with the company. 2 Q. Now, why did you address the 3 letter to Mr. Gatlin rather than Mr. Stewart 4 if you wanted Mr. Stewart to get it? 5 A. To start this thing off -- do you 6 want to go back to the first where it 7 started? 8 Q. Well, no, sir. I just want you 9 to answer my question, which is why you 10 addressed it to Mr. Gatlin? 11 A. Mr. Gatlin had performed an 12 industrial rehab program at the meeting. 13 Q. He had performed an industrial 14 rehab program what? 15 A. At the meeting. 16 Q. What meeting? 17 A. At the 2005 meeting. 18 Q. Okay. And what sort of 19 industrial rehab program did he perform? 20 A. Step -- stepping up and down off 21 of boxes, moving around and doing things that 22 I wasn't able to do at the time, because I 23 had had operations on my feet.</p>	<p style="text-align: right;">115</p> <p>1 A. -- that was when he -- yes, sir, 2 I was not able -- I was not physically able 3 to participate. 4 So, I didn't participate. They 5 just passed by me. 6 Q. All right. Did you tell them you 7 were not able to participate? 8 A. Yes, sir. 9 Q. All right. What, if anything, 10 was said to you at that time about the fact 11 that you were not participating? 12 A. Nothing. They said that I was to 13 help employees and to help employees see what 14 they needed to do to stay fit and able to do 15 the job. 16 Q. All right. And since you weren't 17 able to do it at that time, did you do it at 18 some other time? 19 A. They made an appointment with me 20 to an industrial rehab center in Troy, 21 Alabama. I can't remember the name of it. 22 But -- and I asked them if they were calling 23 me in there to do that industrial rehab to</p>
<p style="text-align: right;">114</p> <p>1 Q. All right. And Mr. Gatlin 2 performed a rehab program -- 3 A. For Bonnie Plant Farm. 4 Q. -- for Bonnie Plant Farm? 5 All right. 6 A. At the 2005 sales meeting in 7 Auburn, Alabama. 8 Q. All right. And did he perform it 9 just on you or -- 10 A. He performed it on everybody at 11 the meeting. 12 Q. All right. Did you voluntarily 13 participate in it? 14 A. Yes, sir. 15 Q. Now, at that time, was Mr. Gatlin 16 employed by Alabama Farmers? 17 A. Yes, sir. 18 Q. And did you get some sort of 19 report in connection with what he performed 20 on you? 21 A. I wasn't able to do any of it at 22 the time. So -- 23 Q. You were not able --</p>	<p style="text-align: right;">116</p> <p>1 fire me. And he assured me that I was over 2 there for him to help me. 3 Q. Okay. 4 A. And he talked to me a few minutes 5 and told me that I just needed to go on about 6 my business. 7 Q. Meaning what? 8 A. That I was not able to do the 9 rehab program at that time. 10 Q. Did you agree with that 11 assessment? 12 A. Yes, sir. 13 Q. All right. Did you ever do the 14 rehab program? 15 A. No, sir. The guy told me that it 16 really didn't have anything to do with your 17 job, that it was just to help you have a 18 healthier lifestyle and a -- 19 Q. So, you never did it? 20 A. No, sir. 21 Q. All right. Now, with that 22 background, why did you address the letter to 23 Mr. Gatlin?</p>

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<p style="text-align: right;">117</p> <p>1 A. Because he was the one that 2 started to give me the industrial rehab 3 first. And the next week after I went to 4 Troy, Joe called me in the office to fire me. 5 Q. Now, when you say after you went 6 to Troy, is that where you went to the 7 appointment? 8 A. Yes, sir, that's where I went to 9 the appointment. 10 Q. And you say Joe called you in the 11 office to fire you? 12 A. The next week. 13 Q. All right. And tell me about 14 that conversation. 15 A. He said that he would help me 16 fill out my disability papers and that -- and 17 I told him that the day I quit work and sat 18 down, that'd be where I'd be. I'd be sitting 19 in that chair. And I pleaded to get a job 20 back. 21 Q. And I'm sorry. The last thing 22 you said, I didn't understand it. 23 A. I pleaded to get a job back.</p>	<p style="text-align: right;">119</p> <p>1 just realized that he couldn't ask me to 2 stand on one foot, because I didn't have a 3 foot that was ready to stand on right then. 4 Q. Okay. Did you ever have any form 5 of assessment of the type that Mr. Gatlin and 6 the fellow in Troy wanted to perform? Did 7 you ever have any type of assessment like 8 that? 9 A. What do you mean? What do you 10 mean by that question? 11 Q. Did you ever go somewhere where 12 they saw how long you could stand on one leg 13 or -- 14 A. Oh, no, sir, I was never -- I 15 never -- I never had it done. 16 Q. All right. And the conversation 17 in which you said a minute ago that Mr. 18 Stewart told you that he would help you fill 19 out disability papers, that was before you 20 made your complaint of age discrimination, 21 correct? 22 A. Yes, sir. 23 Q. All right. Now, at the time that</p>
<p style="text-align: right;">118</p> <p>1 Q. Did Joe tell you -- ever tell you 2 you were fired? 3 A. No, sir. 4 Q. Did he ever tell you you were 5 terminated or words to that effect? 6 A. No, sir. 7 Q. And, in fact, he ultimately did 8 find a place for you to work in -- 9 A. He ultimately worked with me. 10 Q. Pardon? 11 A. He ultimately worked with me. 12 But he put me in positions where I couldn't 13 make the money that I needed -- that I needed 14 to make to keep up a good standard of living, 15 my 401(k), my -- 16 Q. Well, did you tell Tate Gatlin in 17 the meeting in Auburn, Alabama, that you 18 couldn't do the rehab program? 19 A. Yes, sir. 20 Q. And did you tell the gentleman 21 that you went to see in Troy that you 22 couldn't do the rehab program? 23 A. Yes, sir, the gentleman in Troy</p>	<p style="text-align: right;">120</p> <p>1 you addressed this letter on January 10th, 2 2006, to Mr. Gatlin, did you have any 3 information that Mr. Gatlin had anything to 4 do with where you were going to work? 5 A. No, sir. 6 Q. All right. Now, you didn't put 7 anything in the letter to Mr. Gatlin about 8 his forwarding the letter to Mr. Stewart, 9 correct? 10 A. No, sir. 11 Q. And the letter doesn't show a 12 carbon copy to Mr. Stewart, correct? 13 A. No, sir. 14 Q. And, in fact, it was just 15 addressed to Mr. Gatlin, right? 16 A. Right. 17 Q. Did Mr. Gatlin read the letter in 18 front of you? Did he read it at the time you 19 gave it to him? 20 A. Yes, sir. 21 Q. What did he say? 22 A. He didn't comment on it. He just 23 said --</p>

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<p style="text-align: right;">121</p> <p>1 Q. And did you ever, in fact, have</p> <p>2 any conversation with anybody, other than</p> <p>3 Mr. Gatlin, regarding this letter --</p> <p>4 A. No, sir.</p> <p>5 Q. -- which is Watson Exhibit 4?</p> <p>6 MR. MORTON: All right. Let's</p> <p>7 mark this as 5, please.</p> <p>8</p> <p>9 (Whereupon, Defendant's Exhibit 5</p> <p>10 was marked and copy of same is</p> <p>11 attached hereto.)</p> <p>12</p> <p>13 Q. (BY MR. MORTON) Let me show you</p> <p>14 what's been marked as Exhibit 5 to your</p> <p>15 deposition, Mr. Watson. Is that a letter</p> <p>16 that you wrote to Mr. Gatlin?</p> <p>17 A. My lawyer, Albert, wrote the</p> <p>18 letter, and I signed it.</p> <p>19 Q. All right. Now, the second line</p> <p>20 on --</p> <p>21 A. The secretary typed the letter.</p> <p>22 Q. Okay. This one does show a</p> <p>23 carbon copy to Joe Stewart, correct?</p>	<p style="text-align: right;">123</p> <p>1 A. No, sir.</p> <p>2 Q. Did you have any discussion with</p> <p>3 him at all when you brought him this letter?</p> <p>4 A. No, sir.</p> <p>5 Q. The second line of the letter</p> <p>6 says, and I am bringing you a letter today</p> <p>7 from my doctor saying I'm able to work</p> <p>8 without restrictions. Was that a letter you</p> <p>9 had just received from your doctor?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And what had your restrictions</p> <p>12 been prior to your receiving that letter?</p> <p>13 A. I had had both feet operated on,</p> <p>14 I'd had my right knee replaced, and I have a</p> <p>15 problem with bone spurs.</p> <p>16 Q. Okay. But evidently your doctor</p> <p>17 had had you on some sort of restrictions as</p> <p>18 to what you could and couldn't do. And I'm</p> <p>19 asking you what those were.</p> <p>20 Well, let me back up and let me</p> <p>21 ask it this way: Prior to getting the letter</p> <p>22 that's referenced here, had you been unable</p> <p>23 to work at all?</p>
<p style="text-align: right;">122</p> <p>1 A. Correct.</p> <p>2 Q. Did you mail this letter?</p> <p>3 A. No, sir, I hand delivered this</p> <p>4 letter. I would have delivered it to Joe,</p> <p>5 but Joe wasn't in there.</p> <p>6 Q. All right.</p> <p>7 A. I wanted to take it --</p> <p>8 Q. But you hand delivered a copy of</p> <p>9 the letter to Mr. Gatlin?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Did you bring him a copy for Mr.</p> <p>12 Stewart?</p> <p>13 A. You know, I think I had one</p> <p>14 copied. That's all. I don't think I had two</p> <p>15 copies.</p> <p>16 Q. Did Mr. Gatlin read this letter</p> <p>17 in front of you?</p> <p>18 A. I don't remember whether he read</p> <p>19 this one or not. This was in a time of the</p> <p>20 year when he was getting ready to leave. And</p> <p>21 I don't remember.</p> <p>22 Q. Did you have any discussion with</p> <p>23 him about the letter?</p>	<p style="text-align: right;">124</p> <p>1 A. I had been in a -- in a truck</p> <p>2 wreck. And the doctor that was tending me</p> <p>3 had put some restrictions on me due to the</p> <p>4 wreck, due to the bone spurs in my neck. And</p> <p>5 I had gone through a rehabilitation program.</p> <p>6 Q. All right. When were you in the</p> <p>7 truck wreck? I mean, was this something that</p> <p>8 happened in late '05, early '06?</p> <p>9 A. I can't remember when it was, but</p> <p>10 we have it on record somewhere over there.</p> <p>11 Q. Was it --</p> <p>12 A. I think --</p> <p>13 Q. Were you on company business when</p> <p>14 that happened?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Was that a wreck that occurred</p> <p>17 back in December of 2002 that's referenced --</p> <p>18 A. Yes.</p> <p>19 Q. -- in this January 10th letter?</p> <p>20 A. Yes.</p> <p>21 Q. Well, what I'm asking you is, you</p> <p>22 had just gotten a letter from your doctor</p> <p>23 that said -- releasing you to work without</p>

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<p style="text-align: right;">125</p> <p>1 restrictions on or about February 2nd of 2 2006. What were those restrictions? What 3 could you or couldn't you do prior to the 4 time the doctor released you? 5 A. Well, from bending over and 6 picking things up. When you go to a doctor, 7 they put it -- the restrictions that I 8 remember, walking and bending over and 9 picking things up. 10 Q. And when were you put under those 11 restrictions; do you recall? 12 A. Back in 2002 and during the 13 process of getting my knees operated on when 14 I had that truck wreck. And when I was going 15 up to Houston Clinic to get my yearly -- my 16 operations. 17 Q. Well, were the restrictions that 18 you had at the time or up to the time that 19 you wrote this letter, February 2nd, 2006, 20 were those a result of the surgery that you 21 had had on your knees and on your feet? 22 A. Partially, yes, sir. 23 Q. Did you ever have any</p>	<p style="text-align: right;">127</p> <p>1 Q. Pardon me? 2 A. My cousin, Johnny Roy Fendelson, 3 asked me about it. Tony Brown. I talked to 4 Butch Stewart about it. That's about -- it 5 has not been a big topic of conversation for 6 me, because it wasn't something that I wanted 7 to do or intended to do. I'd like to recover 8 the damages that it has done -- that has been 9 done to me. 10 Q. If there are, in fact, people 11 older than you running routes with the 12 company -- I mean, filling your position, 13 would that convince you that you haven't been 14 discriminated against because of your age? 15 A. No, sir. 16 Q. Why not? 17 A. Everybody at Bonnie gets a little 18 different treatment. And Bonnie doesn't 19 appear to be hiring people my age. So, 20 people -- somebody -- just because somebody's 21 older than me has a route, he probably has a 22 route that he -- you know, that he always 23 had. He probably hadn't had to go down and</p>
<p style="text-align: right;">126</p> <p>1 conversation with Mr. Stewart about this 2 letter that's labeled Exhibit 5? 3 A. No, sir. 4 Q. Did you ever have any 5 conversation with anybody else at Bonnie 6 regarding that letter? 7 A. No, sir. Nobody ever called me 8 to talk to me about these or anything. 9 Q. Now, shortly after you received 10 this letter is when you got sent to 11 Donaldsonville, correct? 12 A. Yes, sir. 13 Q. Now, other than what you have 14 told me in this deposition here today, have 15 you ever had any conversations with anybody 16 at Bonnie about age discrimination? 17 A. No at-length conversations. Some 18 people have asked me about it. 19 Q. About your lawsuit? 20 A. Yes, sir. 21 Q. Who asked about your lawsuit, to 22 speak with you? 23 A. Johnny Roy asked me about it.</p>	<p style="text-align: right;">128</p> <p>1 find a store in Harleton, Texas, or Westaco, 2 Texas, or Brownsville, Texas, down on the 3 border where you're having a border war, 4 where you have to be, you know, very careful 5 about where you leave your truck. 6 Q. Well, if somebody else who's 7 older than you is running a route and hasn't 8 had to do that, would that tend to indicate 9 to you that the company doesn't base its 10 decisions on age? 11 A. No, sir, if somebody older than 12 me had a route, they probably had the same 13 route they had last year. 14 Q. Well, the fact that they had the 15 same route they had last year, wouldn't that 16 tend to indicate to you that the company 17 doesn't discriminate on the basis of age? 18 A. No, sir. 19 Q. Well, why do you think -- if, in 20 fact, the company has discriminated against 21 you, Terry Watson, on the basis of your age, 22 why do you think you've been singled out for 23 that treatment?</p>

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<p style="text-align: right;">129</p> <p>1 A. I have no way to know. And I --</p> <p>2 it's probably a good thing I don't know the</p> <p>3 answer to that question.</p> <p>4 Q. You don't have any opinion as to</p> <p>5 why the company would single you out to</p> <p>6 discriminate against you on the basis of your</p> <p>7 age?</p> <p>8 A. If I formed an opinion, it</p> <p>9 wouldn't be good for the person I formed</p> <p>10 it -- I formed it against. So, I choose to</p> <p>11 just sit and listen and see what to do.</p> <p>12 Q. Well, would it be fair to say,</p> <p>13 then, that you don't have an opinion as to</p> <p>14 why the company would single you out for age</p> <p>15 discrimination?</p> <p>16 A. I sure would. I have no idea why</p> <p>17 they picked me out to discriminate against</p> <p>18 me.</p> <p>19 Q. Do you know anybody else they've</p> <p>20 discriminated against on the basis of their</p> <p>21 age?</p> <p>22 A. No, sir. I hadn't been going</p> <p>23 around asking them.</p>	<p style="text-align: right;">131</p> <p>1 written below that line. What is that</p> <p>2 written below that line? Can you read it?</p> <p>3 A. I just said that I would like for</p> <p>4 him to have it.</p> <p>5 Q. And then, you wrote Arthur Terrell</p> <p>6 wants it?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And then, what does year round</p> <p>9 driver pay mean?</p> <p>10 A. They have people that can get on</p> <p>11 year round pay where they, you know, work</p> <p>12 year round with the company. And this guy's</p> <p>13 been working for Bonnie Plant Farm ever since</p> <p>14 he was a young child. And he asked me if I'd</p> <p>15 see if he could get it. And the company</p> <p>16 said, no, that he couldn't get it.</p> <p>17 Q. If he were to get it, would it</p> <p>18 come out of your pocket?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And who said he couldn't get it?</p> <p>21 A. Tim Trussell called me and told</p> <p>22 me that he could not. I don't know who</p> <p>23 the --</p>
<p style="text-align: right;">130</p> <p>1 MR. MORTON: Let's mark this one</p> <p>2 as the next exhibit.</p> <p>3</p> <p>4 (Whereupon, Defendant's Exhibit 6</p> <p>5 was marked and copy of same is</p> <p>6 attached hereto.)</p> <p>7</p> <p>8 Q. (BY MR. MORTON) Let me show you</p> <p>9 what's been marked Defendant's Exhibit 6.</p> <p>10 That is Driver's Helper-Employment Contract</p> <p>11 for Kenny Smith, right?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And Kenny Smith is your helper,</p> <p>14 correct?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Did you fill this document out?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And is it your signature over</p> <p>19 here in the blank that says salesman?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And down here at the bottom, it</p> <p>22 says, Kenny B. Smith requests year round</p> <p>23 driver pay. And then, there's something</p>	<p style="text-align: right;">132</p> <p>1 Q. What did you say to Tim?</p> <p>2 A. I told him that was fine. He</p> <p>3 just, you know, wondered if he could get it.</p> <p>4 Q. And --</p> <p>5 A. And I told him --</p> <p>6 Q. -- how old is Kenny Smith?</p> <p>7 A. I imagine he's around forty, just</p> <p>8 guessing. I don't really know.</p> <p>9 Q. If he received year round driver</p> <p>10 pay, wouldn't that increase the chance that</p> <p>11 your labor cost would exceed your commission?</p> <p>12 A. Well, it would -- it would put</p> <p>13 him in a position to -- it may -- it may --</p> <p>14 it may would figure less on that long route.</p> <p>15 It's two hundred fifteen miles from Beeville</p> <p>16 to the big stores in Brownsville. And I</p> <p>17 don't know if you've ever been down to</p> <p>18 Brownsville, Westaco, Harleton, Rio Grande</p> <p>19 City. I don't know if you've ever been down</p> <p>20 to the border or not --</p> <p>21 Q. I haven't.</p> <p>22 A. -- but it looks like Miami.</p> <p>23 They're building Lowe's, Home</p>

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1 Depots, Wal-Marts down there like they're
 2 going out of style.
 3 Q. And my question simply is, if
 4 Mr. Smith received year round driver pay --
 5 A. If he went on year round driver
 6 pay, it would probably be less money.
 7 Q. And why do you believe that?
 8 A. Because they would -- that would
 9 be a set amount of dollars that he made
 10 and --
 11 Q. Doesn't he get paid by the hour?
 12 A. Yes, sir, but he wouldn't be paid
 13 by the hour if he was on the year round pay.
 14 If he was on the year round pay, he would be
 15 paid a certain amount of money per year.
 16 Q. Do you know whether or not he's
 17 required in his position to be paid by the
 18 hour?
 19 A. Do I know what?
 20 Q. Do you know whether the law
 21 requires, given his position, he be paid by
 22 the hour?
 23 A. No, sir, I had no idea what the

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1 law was. I just made the request for him
 2 because he asked me to.
 3 Q. All right. But if it turned
 4 out --
 5 A. And the request was denied, and
 6 nobody -- nobody -- nobody got upset. Nobody
 7 said anything. It was just over. We got --
 8 we stayed at work, got up the next day and
 9 went to work. And find out, it wasn't --
 10 Q. Does he have a Commercial
 11 Driver's License?
 12 A. No, sir, but he has a health
 13 card. To drive these trucks, you only have
 14 to have a health card and a regular driver's
 15 license. And he has a health card and a
 16 driver's license.
 17 Q. And, in fact, you don't know for
 18 sure whether or not his receiving year round
 19 driver's pay would have increased or
 20 decreased his compensation, do you?
 21 A. That's true.
 22 Q. And, in fact, don't you think it
 23 would be strange for him to request something

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1 that would reduce his pay?
 2 A. No, sir, because if he could get
 3 on the year round program, it would qualify
 4 him for health insurance. And he was
 5 interested in getting some benefits.
 6 Q. As part of your job, are you
 7 required to get in and out of the back of
 8 your truck?
 9 A. Yes, sir.
 10 Q. Can you do that?
 11 A. Yes, sir.
 12 Q. When's the last time you did it?
 13 A. Probably Friday. I got in and
 14 pulled the plants out for the Wal-Mart in
 15 Alice, Texas.
 16 Q. How many times a day do you get
 17 in and out of the back of your truck?
 18 A. Some days, I don't even get in
 19 the back of the truck. But when I need to, I
 20 do.
 21 Q. Isn't it your responsibility to
 22 make sure that the load's safely loaded and
 23 secured?

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1 A. Yes, sir.
 2 Q. How can you do that without
 3 getting in the back of the truck?
 4 A. I can look up in the truck and
 5 see.
 6 Q. But you don't get up in --
 7 A. I can see all through the truck.
 8 I get up in there if I need to.
 9 Q. Is it physically difficult for
 10 you to get up in there?
 11 A. I can get in and out of the truck
 12 with a -- with difficulty. And if I -- I
 13 couldn't get in and out of the truck all day
 14 long like most people could. If I could, I
 15 always worked the back of my truck myself
 16 when I was able to get in and out of the back
 17 of it. But, now, I've gotten to where I
 18 can't, and I try to have somebody working
 19 with me that I can depend on to get up in the
 20 back of that truck and do what needs to be
 21 done up there.
 22 Q. But you can't get in and out like
 23 most people can, correct?

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<p style="text-align: right;">137</p> <p>1 A. Correct.</p> <p>2 Q. Did you sign a contract with</p> <p>3 Bonnie this year?</p> <p>4 A. I always sign them. I don't</p> <p>5 remember if I signed one this year or not.</p> <p>6 I'm sure I did. I'm sure I signed one at the</p> <p>7 sales meeting in August.</p> <p>8 MR. MORTON: Mark that.</p> <p>9</p> <p>10 (Whereupon, Defendant's Exhibit 7</p> <p>11 was marked and copy of same is</p> <p>12 attached hereto.)</p> <p>13</p> <p>14 Q. (BY MR. MORTON) Let me show you</p> <p>15 what's been marked Exhibit 7 to your</p> <p>16 deposition and ask if that is not a job</p> <p>17 description for your position as driver/</p> <p>18 salesman at Bonnie?</p> <p>19 A. Yes, sir.</p> <p>20 Q. You've seen it before, correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And you understand that it does,</p> <p>23 in fact, accurately describe your duties and</p>	<p style="text-align: right;">139</p> <p>1 route?</p> <p>2 A. No, sir.</p> <p>3 Q. Why not?</p> <p>4 A. It's a long route with a pile of</p> <p>5 chain stores on it that's just too cumbersome</p> <p>6 and too long and hard to work. It's a type</p> <p>7 of route that is -- that is -- it's just</p> <p>8 overloaded with chain stores.</p> <p>9 Q. Don't chain stores -- when you</p> <p>10 say chain stores, do you mean stores like</p> <p>11 Wal-Marts, Lowe's?</p> <p>12 A. Wal-Mart, Home Depot, Lowe's --</p> <p>13 Q. And --</p> <p>14 A. -- Kmart.</p> <p>15 Q. And doesn't the presence of a lot</p> <p>16 of chain stores on your route give you an</p> <p>17 opportunity to make more money?</p> <p>18 A. Excuse me. It depends on where</p> <p>19 you are. The reason that I have -- I'll give</p> <p>20 you an example. Adam Alley, he worked a</p> <p>21 route out of Bells, Tennessee. And he had</p> <p>22 about four stores on it, but one of them</p> <p>23 could sell a hundred thousand dollars worth</p>
<p style="text-align: right;">138</p> <p>1 responsibilities --</p> <p>2 A. Yes, sir.</p> <p>3 Q. -- in that position, correct?</p> <p>4 And would you agree with me that</p> <p>5 in order to fully discharge your duties and</p> <p>6 responsibilities, you need to be able to get</p> <p>7 back and get in and out of the back of your</p> <p>8 truck on a regular basis?</p> <p>9 A. Well, I know what's in the back</p> <p>10 of my truck. I get in and out of my truck</p> <p>11 when I need to. And I've had no problem, and</p> <p>12 nobody's ever told me I had a problem. Now,</p> <p>13 you're telling me that I've got a problem</p> <p>14 getting in and out of the back of my truck.</p> <p>15 Where does that come from?</p> <p>16 Q. I'm just asking you questions,</p> <p>17 Mr. Watson. And you're telling me you do</p> <p>18 have a difficult time getting in and out of</p> <p>19 the back of the truck.</p> <p>20 A. But I don't have a difficult time</p> <p>21 running my route and doing what needs to be</p> <p>22 done on that route.</p> <p>23 Q. Are you happy with your current</p>	<p style="text-align: right;">140</p> <p>1 of plants.</p> <p>2 I have stores down there, and we</p> <p>3 don't really know what they'll sell. We</p> <p>4 don't really have the product that they ask</p> <p>5 for to put in the stores when they -- when</p> <p>6 they want it. And it's -- that's just a</p> <p>7 loaded question to say about this business.</p> <p>8 Q. Well, you've got the same product</p> <p>9 to sell to those stores that everybody else</p> <p>10 that works out of Beeville, Texas, has, don't</p> <p>11 you?</p> <p>12 A. Those stores start selling in</p> <p>13 February and March. And as a general rule,</p> <p>14 it's hard to have a lot of product ready, you</p> <p>15 know, in February and March.</p> <p>16 Q. Did you understand my question?</p> <p>17 My question is, don't you have the same</p> <p>18 products to sell to those stores that</p> <p>19 everybody else that works out of your station</p> <p>20 has?</p> <p>21 A. I have the product a month late</p> <p>22 after that season down there has slowed down.</p> <p>23 Q. At the same time that everybody</p>

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<p style="text-align: right;">141</p> <p>1 else in Beeville, Texas --</p> <p>2 A. At the same time they have</p> <p>3 access to it --</p> <p>4 Q. -- gets it, correct?</p> <p>5 A. -- I have access to it, but it's</p> <p>6 late for the people down on the border.</p> <p>7 MR. MORTON: Let's mark this one</p> <p>8 as the next exhibit.</p> <p>9</p> <p>10 (Whereupon, Defendant's Exhibit 8</p> <p>11 was marked and copy of same is</p> <p>12 attached hereto.)</p> <p>13</p> <p>14 Q. (BY MR. MORTON) What's Exhibit</p> <p>15 8? Is that your charge of discrimination,</p> <p>16 Mr. Watson?</p> <p>17 A. What was your question?</p> <p>18 Q. Is that your charge of</p> <p>19 discrimination that you filed with the EEOC?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And you understand that you</p> <p>22 signed it under oath, right?</p> <p>23 A. Yes, sir.</p>	<p style="text-align: right;">143</p> <p>1 Louisiana. Where is that? It is hard -- it</p> <p>2 is hard to keep up with when you're paid for</p> <p>3 what, sir.</p> <p>4 Q. Well, in 2006, you made thirty-</p> <p>5 eight thousand dollars from Bonnie, right?</p> <p>6 A. Right. But that was from 2005</p> <p>7 payments, I'm sure.</p> <p>8 Q. All right.</p> <p>9 A. I'm not really sure what the</p> <p>10 settlement sheet is. I'd have to look at</p> <p>11 them, go through them, and go back and figure</p> <p>12 it up what was what.</p> <p>13 MR. MORTON: Let's mark these as</p> <p>14 9.</p> <p>15</p> <p>16 (Whereupon, Defendant's Exhibit 9</p> <p>17 was marked and copy of same is</p> <p>18 attached hereto.)</p> <p>19</p> <p>20 Q. (BY MR. MORTON) Let me show you</p> <p>21 what I've marked as Exhibit 9 to your</p> <p>22 deposition. Ask you if those are not your</p> <p>23 W-2s for 2003, 2004, and 2005?</p>
<p style="text-align: right;">142</p> <p>1 Q. You say that you developed the</p> <p>2 route in Bells, Tennessee, into a very</p> <p>3 lucrative route. That route had actually</p> <p>4 been around since the early '70s, hadn't it,</p> <p>5 sir?</p> <p>6 A. Yes, sir.</p> <p>7 Q. You state in here that on your</p> <p>8 route in Bells, Tennessee, you made forty-</p> <p>9 five thousand dollars.</p> <p>10 A. Yes, sir.</p> <p>11 Q. Do you see that?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Now, your W-2 for Bonnie for</p> <p>14 2006, right?</p> <p>15 MR. ROBERSON: He didn't work</p> <p>16 that route in 2006.</p> <p>17 Q. (BY MR. MORTON) You didn't work</p> <p>18 that route in 2006?</p> <p>19 A. No, sir.</p> <p>20 Q. Well, does your 2006 W-2 reflect</p> <p>21 your compensation from that route?</p> <p>22 A. Let me see. I was paid that</p> <p>23 on -- when I was in Donaldsonville,</p>	<p style="text-align: right;">144</p> <p>1 A. Yes, sir, these are my W-2s for</p> <p>2 these years. But for what year I was paid on</p> <p>3 them, my compensation was paid on what year I</p> <p>4 made it, would be hard to tell looking at</p> <p>5 this W-2.</p> <p>6 Q. Okay. But in none of those</p> <p>7 years, 2003, 2004, and 2005, were you paid</p> <p>8 forty-five thousand dollars by Bonnie; isn't</p> <p>9 that correct?</p> <p>10 A. That is correct. But my pay for</p> <p>11 2005 is not represented on the W-2 form.</p> <p>12 Q. Well, is your pay for 2005 --</p> <p>13 it's not represented on any of the W-2 forms?</p> <p>14 A. I'm sure that part of it would be</p> <p>15 over on the 2006. In 2006, I had to file</p> <p>16 state income taxes to the State of Alabama</p> <p>17 and to the State of Louisiana. And part of</p> <p>18 that compensation was for money that I made</p> <p>19 in Tennessee that I shouldn't have had to pay</p> <p>20 any state income tax on.</p> <p>21 Q. Why not?</p> <p>22 A. Tennessee doesn't have a state</p> <p>23 income tax.</p>

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<p style="text-align: right;">145</p> <p>1 Q. Well, certainly, it's not 2 Bonnie's fault what the tax laws in other 3 states are, is it? 4 A. It's Bonnie's fault that they 5 paid me for money earned in Tennessee as if 6 it was earned in Louisiana. 7 Q. Did you take that up with Bonnie? 8 A. I just realized that I had to 9 fill the forms out and filled them out, 10 because I had been down there working. And 11 then, when I had time to look at it -- see, I 12 don't even have my forms yet for this year. 13 I'm going to have to get my taxes filled out 14 before April the 15th now. And I travel so 15 much until we're going to have to get the IRS 16 to send us the tax forms from 2006. 17 Q. Anybody running your route -- did 18 anybody run your route yesterday? 19 A. No, sir. 20 Q. Anybody running your route today? 21 A. No, sir. 22 Q. Why didn't you tell Chris Hall 23 until Sunday that you were going to be here</p>	<p style="text-align: right;">147</p> <p>1 A. Yes, sir. 2 Q. And you know his number, don't 3 you? 4 A. Yes, sir. 5 Q. You just didn't tell him? 6 A. I just didn't do it. There's no 7 other way around. 8 Q. Did you not get out to Beeville, 9 Texas, late this year? 10 A. No, sir. I got out there -- I 11 carried a new man out to Beeville. And I had 12 some problems at home that I had to come back 13 to see about. And nobody was put on my route 14 to see about anything then. So, I didn't 15 figure he would be concerned about putting 16 anybody on my route today. 17 Q. Didn't you get out to Beeville, 18 Texas, later than you were supposed to 19 report -- 20 A. No, sir. 21 Q. -- initially? 22 A. No, sir. 23 Q. You went home and you stayed</p>
<p style="text-align: right;">146</p> <p>1 instead of out there? 2 A. I really wasn't planning on 3 leaving Friday. I was planning on waiting 4 and leaving Saturday morning. And I just 5 changed my mind. And I've got a six-year-old 6 son that I've never spent Easter with. He 7 has lost his grandfather and grandmother on 8 his mother's side. And I said, if I'm going 9 to spend Easter with him, I've got to go now, 10 because it's a sixteen-hour drive. 11 And I didn't really think about 12 calling Chris Hall. And the route is in good 13 shape. And I feel sure he wouldn't send 14 anybody down there on it anyway. 15 Q. Don't you think, as your boss, he 16 had the right to know whether you were going 17 to be there or not? 18 A. He sure did. 19 Q. He's got a cell phone, doesn't 20 he? 21 A. He sure does. 22 Q. And you've got a cell phone, 23 don't you?</p>	<p style="text-align: right;">148</p> <p>1 longer than you had told Chris Hall you were 2 going to stay, did you not? 3 A. Yes, sir. 4 Q. And, in fact, he called you 5 several times trying to find out when you 6 were coming back, didn't he? 7 A. I think he might have called me 8 one time, maybe twice. I told him what I was 9 doing. I take Coumadin. 10 Q. I beg your pardon? 11 A. I take Coumadin, which is rat 12 poison. It's what you feed a rat, and it 13 will cause them to bleed to death internally. 14 And I was having some problems with that 15 Coumadin. And I had to put Sam in the 16 hospital. He had pneumonia. And I had to go 17 leave him in the hospital and get him. 18 But I wasn't -- that's the 19 only -- that's the only time out of my tenure 20 with the company I've ever been late getting 21 started. And I went out there to start and 22 got -- showed the new man my route. And I 23 took the man around and showed him the stores</p>

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<p style="text-align: right;">149</p> <p>1 on the route, because I was going to give 2 that route to him. And when it came time for 3 me to go back on mine, I had major problems 4 that I needed to see about. 5 Q. And there were, as you're aware, 6 a number of complaints from customers on your 7 routes about lack of service, correct? 8 A. No, sir, there are no complaints 9 that I know of on my route. 10 Q. You're not aware of any 11 complaints on your route at all? 12 A. No, sir. 13 Q. And you're not aware -- Tim 14 Trussell never told you that there were 15 complaints that you had not been to stores on 16 your route in a timely fashion? 17 A. He told me that I needed to get 18 down there and get that route straightened 19 out, that some of the stores had looked for 20 plants a little earlier than they got them. 21 Q. And had called him and wanted to 22 know where the plants were, correct? 23 A. I don't know who they called. I</p>	<p style="text-align: right;">151</p> <p>1 down there and showed him my route. That's 2 the week I should have started running that 3 route. 4 Q. And how much time did you miss by 5 coming back to Birmingham, or coming back to 6 Alabama? 7 A. I don't really know. You know, 8 you're just in the heat of working and trying 9 to get things straightened out and do the 10 best you can do. 11 Q. Well, you don't know when you 12 left out there and when you got back? 13 A. I don't. 14 Q. Why'd you come back here? 15 A. I needed to see about my Coumadin 16 levels, and I had to take Sam and put him in 17 the hospital, because he had pneumonia. I 18 had a death in the family, and I also lost a 19 neighbor while I was here. 20 Q. Okay. I'm asking you why you 21 came back here. 22 A. I came -- 23 MR. ROBERSON: I think he told</p>
<p style="text-align: right;">150</p> <p>1 don't know who they talked to about it. 2 Q. You don't know whether they made 3 complaints or not? 4 A. Huh-uh. 5 Q. Right? 6 A. Right. When you start off, they 7 usually call you and tell you -- it's not 8 unusual for them to call and tell you we're 9 ready to get plants now. It's not an unusual 10 call at all. 11 Q. How late were you getting started 12 on your route? 13 A. I wouldn't know how to define 14 that. I know the Home Depots didn't even 15 come out to see us, we started so early. The 16 Lowe's people wanted their racks in place. 17 We had a problem getting them -- 18 Q. Well, let me ask it this way -- 19 A. -- in place and set up. 20 Q. -- when were you supposed to 21 start running that route? 22 A. I normally started running that 23 route the week that I carried Chris Salter</p>	<p style="text-align: right;">152</p> <p>1 you. 2 A. I came back here to tend to -- 3 MR. MORTON: He's telling me that 4 he lost a neighbor while he was here. That 5 doesn't explain -- that doesn't answer my 6 question as to why he came back here. 7 A. I came back here to see my 8 doctor. 9 Q. (BY MR. MORTON) To see your 10 daughter? 11 A. Doctor. 12 MR. ROBERSON: Doctor. 13 Q. (BY MR. MORTON) To see your 14 doctor. What doctor is that? 15 A. Dr. Pat Walker. 16 Q. And where is Dr. Pat Walker? 17 A. He's in Vernon, Alabama. 18 Q. And how long was that supposed to 19 take? 20 A. You don't know when you're having 21 problems getting your blood level right. 22 Q. Did you try to find a doctor in 23 Texas?</p>

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<p style="text-align: right;">153</p> <p>1 A. I have a doctor in Texas.</p> <p>2 Q. Why didn't you go to that doctor?</p> <p>3 A. He suggested -- he suggested that</p> <p>4 I come. I had to come home twice. The</p> <p>5 second time was a time that really hurt. I</p> <p>6 overdosed out there. And he said that I</p> <p>7 could have an allergic reaction, and it could</p> <p>8 be bad.</p> <p>9 Q. When was the second time you came</p> <p>10 back?</p> <p>11 A. I don't remember.</p> <p>12 Q. Was it this year?</p> <p>13 A. This year, yes, sir. I told you,</p> <p>14 this is the only year that I have ever been</p> <p>15 late on a route. And one time out of as many</p> <p>16 years as I've been out there, and I had no</p> <p>17 help offered me at all.</p> <p>18 Q. What do you mean no help offered</p> <p>19 you?</p> <p>20 A. Exactly what I said. Nobody</p> <p>21 offered to do anything on that route. And</p> <p>22 when I go back this time, if anybody's done</p> <p>23 anything on that route, it would be shocking.</p>	<p style="text-align: right;">155</p> <p>1 A. Well, I was planning on driving</p> <p>2 back tonight.</p> <p>3 Q. When you were given your route,</p> <p>4 weren't you given a list of customers and</p> <p>5 addresses?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Do you have access to a map?</p> <p>8 A. Have you ever looked at a map in</p> <p>9 south Texas?</p> <p>10 Q. My question is, did you have</p> <p>11 access to a map?</p> <p>12 A. I went by the visitor's station</p> <p>13 and picked a map up.</p> <p>14 Q. And did you have phone numbers</p> <p>15 for these places?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Did you call them and find out</p> <p>18 how to get there?</p> <p>19 A. No, sir.</p> <p>20 Q. Why not?</p> <p>21 A. You usually just find them.</p> <p>22 Q. Pardon me?</p> <p>23 A. You usually just find them.</p>
<p style="text-align: right;">154</p> <p>1 Q. Did you ask anybody -- did you</p> <p>2 ask anybody to run your route?</p> <p>3 A. No, sir, there wasn't nobody out</p> <p>4 there to ask. I didn't even know where the</p> <p>5 route was. The way they showed me that</p> <p>6 route, they just put some dots on a map.</p> <p>7 Q. So, you've been back to Alabama</p> <p>8 since you started in Beeville three times?</p> <p>9 Twice were for, you said --</p> <p>10 A. That's right, and this is --</p> <p>11 Q. -- medical reasons --</p> <p>12 A. -- third time.</p> <p>13 Q. -- and then, this time?</p> <p>14 A. That's right.</p> <p>15 Q. The other two times, did you</p> <p>16 tell --</p> <p>17 A. This is the first time --</p> <p>18 Q. -- Chris when you left?</p> <p>19 MR. ROBERSON: Let him ask the</p> <p>20 question.</p> <p>21 A. Yes, sir. Yes, sir.</p> <p>22 Q. (BY MR. MORTON) When will you be</p> <p>23 back out there?</p>	<p style="text-align: right;">156</p> <p>1 Q. But that was an option you had</p> <p>2 that you didn't exercise, right?</p> <p>3 A. Yes. And those people speak a</p> <p>4 different language, and it's hard to ask</p> <p>5 somebody where something is out there. They</p> <p>6 can tell me somebody's name out there, and I</p> <p>7 might have no idea what they said.</p> <p>8 Q. How old is Bill Rainer, by the</p> <p>9 way?</p> <p>10 A. I imagine he's a few years</p> <p>11 younger than I am. I don't know for sure.</p> <p>12 Q. You told me one medicine that you</p> <p>13 were on. What are you on that medicine for?</p> <p>14 A. To thin my blood.</p> <p>15 Q. All right. What condition causes</p> <p>16 you to need to have your blood thinned?</p> <p>17 A. My heart.</p> <p>18 Q. All right.</p> <p>19 A. I need to be sure that I don't</p> <p>20 have clots should I have a problem.</p> <p>21 Q. And when did you develop problems</p> <p>22 with your heart?</p> <p>23 A. I had them all my life, and I</p>

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<p style="text-align: right;">157</p> <p>1 found out about them in 2000.</p> <p>2 Q. Did you miss time in 2007 as a</p> <p>3 result of heart problems?</p> <p>4 A. In when?</p> <p>5 Q. 2007?</p> <p>6 A. No, sir.</p> <p>7 Q. Did you miss some time in 2007</p> <p>8 for any reason?</p> <p>9 A. No, sir.</p> <p>10 Q. What other medications do you</p> <p>11 take?</p> <p>12 A. I take Actos.</p> <p>13 Q. What is that for?</p> <p>14 A. Sugar lowering drug.</p> <p>15 Q. Are you diabetic?</p> <p>16 A. Yes, sir.</p> <p>17 Q. When did you find out you were</p> <p>18 diabetic?</p> <p>19 A. Joe sent me to get a physical</p> <p>20 when I was working with him over in Union</p> <p>21 Springs. And the doctor knew my family</p> <p>22 history. It must have been mid '80s,</p> <p>23 somewhere in there, just guessing.</p>	<p style="text-align: right;">159</p> <p>1 Q. What for?</p> <p>2 A. Pain. I take Skelaxin for pain.</p> <p>3 I take Florocid. And I take --</p> <p>4 Q. What's that for?</p> <p>5 A. Water pill.</p> <p>6 Q. What do you mean by water pill?</p> <p>7 A. It makes you go to the bathroom.</p> <p>8 It's a diuretic.</p> <p>9 Q. What else?</p> <p>10 A. Let's see. Metropol. It's a</p> <p>11 heart medicine.</p> <p>12 What else have you got? How many</p> <p>13 have you got on there?</p> <p>14 Q. One, two, three, four, five, six,</p> <p>15 seven, eight, nine, ten.</p> <p>16 A. Did you put -- yeah, you put</p> <p>17 Coumadin on there. I take some more, but I</p> <p>18 can't just right offhand recall them, and I</p> <p>19 know what they are.</p> <p>20 Q. All right. The ones that you've</p> <p>21 told me about, do you take those daily?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And there are other medications</p>
<p style="text-align: right;">158</p> <p>1 Q. What else do you take?</p> <p>2 A. Clonidine.</p> <p>3 Q. What is that?</p> <p>4 A. That's a blood pressure lowering</p> <p>5 medicine.</p> <p>6 Q. What's it for?</p> <p>7 A. Heart.</p> <p>8 Q. What else?</p> <p>9 A. Diovan.</p> <p>10 Q. What's that for?</p> <p>11 A. I don't know. It's a heart</p> <p>12 medicine is all I know.</p> <p>13 Q. What other medications do you</p> <p>14 take?</p> <p>15 A. I take Glucophage.</p> <p>16 Q. Is that for the diabetes?</p> <p>17 A. Diabetes.</p> <p>18 Q. What else do you take?</p> <p>19 A. I take Lyrica.</p> <p>20 Q. For what?</p> <p>21 A. For nerves.</p> <p>22 Q. What else?</p> <p>23 A. I take Hydrocodeine.</p>	<p style="text-align: right;">160</p> <p>1 you take daily as well?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Do any of the medicines that you</p> <p>4 take make it unsafe for you to operate</p> <p>5 machinery?</p> <p>6 A. No, sir.</p> <p>7 Q. You specifically checked into</p> <p>8 that?</p> <p>9 A. Yes, sir. I have a --</p> <p>10 Q. That's your health card so you</p> <p>11 can drive?</p> <p>12 A. Yes, sir.</p> <p>13 Q. It was issued in October of '07?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Have you added any medication</p> <p>16 since that time?</p> <p>17 A. No, sir.</p> <p>18 Q. You told me about your</p> <p>19 difficulties getting in and out of the truck.</p> <p>20 Do you have difficulties bending, stooping,</p> <p>21 or lifting?</p> <p>22 A. I don't have any problem moving</p> <p>23 plants, but I have a problem with weights.</p>

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<p style="text-align: right;">161</p> <p>1 Q. What kind of problem with weights 2 do you have? 3 A. As long as I stay a certain 4 height, none. If I go up too high with them. 5 Q. In other words, you have problems 6 lifting things above the level of your chest? 7 A. Yes, sir, that would be up 8 overhead, somewhere up there. I don't know 9 exactly where the line is. 10 Q. Do you have any other problems 11 with weights? 12 A. Well, not to mention that I can 13 think of. 14 Q. Do you have any problems with 15 bending or stooping? 16 A. No, sir. They said they was 17 going to get a man to help me load my truck. 18 Sometimes we have help and sometimes we 19 don't. 20 Q. All right. And this would be 21 somebody in addition to Mr. Smith? 22 A. Yes, sir. 23 Q. And where would this person come</p>	<p style="text-align: right;">163</p> <p>1 Bonnie, do you not, to do business with a 2 certain number of schools and a certain 3 number of churches? 4 A. Yes, sir. 5 Q. And that would be twenty schools 6 and twenty churches? 7 A. Yes, sir. 8 Q. And how many schools and churches 9 have you signed up at this point? 10 A. I've probably got one church and 11 probably six schools, just guessing offhand. 12 That'll be one of the things that I'll start 13 doing hard when I go back. 14 Q. Are you behind on that with 15 respect to the other people out there in 16 Beeville? 17 A. I don't know what -- I don't 18 know. I have no idea what -- 19 Q. Now, your performance, your 20 sales, your achievement of levels for bonuses 21 and so on affects the compensation of the 22 station manager, does it not? 23 A. Yes, sir.</p>
<p style="text-align: right;">162</p> <p>1 from? 2 A. There on the yard. 3 Q. All right. And what's his normal 4 job? Does he normally work in the 5 greenhouse? 6 A. Well, sometimes he would be 7 working on another truck or -- the 8 greenhouse, you don't get any help from them 9 down there. 10 Q. Do you and Mr. Smith need help 11 loading the truck? 12 A. Sometimes we do and sometimes -- 13 when we can get it, if we need it. When we 14 can't, we do it ourselves. 15 Q. Who pays for the labor to help 16 you load your truck? 17 A. It's charged to my account. 18 Q. Charged to your account? 19 A. Yes, sir. 20 Q. At what rate? 21 A. At whatever rate that person is 22 being paid. 23 Q. Now, you have some obligations to</p>	<p style="text-align: right;">164</p> <p>1 Q. If you don't do a good job, it 2 takes money out of his pocket, right? 3 A. That's right. 4 Q. What's the name of the church you 5 signed up? 6 A. It was a Presbyterian church over 7 there in Beeville. I don't remember what the 8 name of it was. 9 THE WITNESS: When you get where 10 we can, I'd like to take a restroom break. 11 MR. MORTON: All right. Why 12 don't we take a break? 13 14 (Whereupon, a brief recess was 15 taken.) 16 17 (Whereupon, Defendant's Exhibit 18 10 was marked and copy of same is 19 attached hereto.) 20 21 Q. (BY MR. MORTON) How tall are 22 you, Mr. Watson? 23 A. Around six one.</p>

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<p style="text-align: right;">165</p> <p>1 Q. All right. And how much do you 2 weigh? 3 A. I weigh around three twenty-five, 4 three twenty-six now. 5 Q. All right. And what's the most 6 that you've weighed in the last two years? 7 A. Probably three thirty. 8 Q. Would you agree with me that your 9 physical condition makes it difficult for you 10 to do your job as a driver/salesman at 11 Bonnie? 12 A. I would agree with that theory, 13 but I have always been able to do the job and 14 get the job done regardless of it. Somehow, 15 I've been blessed to do it. 16 Q. Would you agree with me that you 17 are not capable of working as quickly as you 18 could when you were younger? 19 A. Yes, sir. I definitely can't 20 work as fast as I used to. Riding in them 21 trucks is rough on you. 22 Q. Let me show you Defendant's 23 Exhibit 10.</p>	<p style="text-align: right;">167</p> <p>1 Q. And is it, in fact, accurate? 2 A. The best I can tell, it probably 3 is. 4 Q. Now, when you wanted -- when you 5 decided to go to Bells to swap with Butch 6 Stewart, part of your reason for doing so was 7 that you would not have to run a fall route, 8 correct? 9 A. Would not have to run a fall 10 route and wouldn't have to run a long spring 11 route. 12 Q. And, generally, the longer your 13 spring route, the more opportunity you have 14 to make money? 15 A. No, sir. 16 Q. So far as not running a fall 17 route is concerned, if you don't run a fall 18 route, that cuts into your income, does it 19 not? 20 A. Yes, sir. 21 Q. And did you -- 22 A. The reason that I had to make 23 that change is, I was making plans to have my</p>
<p style="text-align: right;">166</p> <p>1 MR. MORTON: And, Jerry, I just 2 shot you a copy over there. 3 Q. Is that your settlement sheet, 4 your commission settlement sheet, for the 5 spring of 2005? 6 A. Fall, '04 and spring, '05. They 7 added -- yeah, they started adding the fall 8 sales then. I don't know where fall, '04 9 came from, and I don't know where spring, '05 10 came from. 11 Q. Pardon me, sir? 12 A. Where did fall, '04 come from? 13 Q. Did you ever work a fall route? 14 A. Yes, sir. 15 Q. When? 16 A. I worked fall routes up until '05 17 when I went to work in Bells. 18 Q. All right. Well -- 19 A. So, it must have been the fall 20 route that I worked down in Texas. 21 Q. Have you seen this settlement 22 sheet before? 23 A. Yes, sir.</p>	<p style="text-align: right;">168</p> <p>1 knees and feet repaired. 2 Q. Have you sought to work a fall 3 route since then? 4 A. No, sir. 5 Q. Never asked anybody for the 6 opportunity to do that, correct? 7 A. No, sir. 8 Q. And you had an opportunity to run 9 a fall route in Beeville, did you not, this 10 past fall? 11 A. No, sir. Fall routes were filled 12 over there this fall. 13 Q. And nobody asked you to run a 14 fall route in Beeville -- 15 A. No, sir. 16 Q. -- is that your testimony? 17 A. Yes, sir. 18 Q. Have you made any attempts to 19 calculate your damages in this case? 20 A. No, sir, I have no idea what my 21 damages would be or what to -- nobody's told 22 me anything about damages if you mean dollar 23 value --</p>

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<p style="text-align: right;">169</p> <p>1 Q. That's right.</p> <p>2 A. -- values.</p> <p>3 Q. Have you made any --</p> <p>4 A. I mean, I -- and I can't</p> <p>5 calculate the physical and the working</p> <p>6 damages. No way to calculate that.</p> <p>7 Q. What do you mean by that?</p> <p>8 A. When you've been mistreated, you</p> <p>9 can't calculate in dollars and cents what</p> <p>10 that has cost you --</p> <p>11 Q. Well, have you made any --</p> <p>12 A. -- that you can calculate in</p> <p>13 dollars and cents what you would have made</p> <p>14 against what you're making.</p> <p>15 Q. Have you made any attempt to do</p> <p>16 that?</p> <p>17 A. No, sir, I've had no reason to.</p> <p>18 MR. MORTON: Let's mark that.</p> <p>19</p> <p>20 (Whereupon, Defendant's Exhibit</p> <p>21 11 was marked and copy of same is</p> <p>22 attached hereto.)</p> <p>23</p>	<p style="text-align: right;">171</p> <p>1 a 2005 sales meeting. I was at the sales</p> <p>2 meeting.</p> <p>3 Q. And that was the 2005 sales</p> <p>4 meeting in Auburn?</p> <p>5 A. In Auburn, Alabama.</p> <p>6 Q. All right.</p> <p>7 A. You know, they even stopped</p> <p>8 giving me my base pay. Why did they do that?</p> <p>9 Q. When did they stop giving you</p> <p>10 base pay?</p> <p>11 A. In June or July of this year -- I</p> <p>12 can't remember exactly when -- of '07.</p> <p>13 Q. Is that when your --</p> <p>14 A. Here it is.</p> <p>15 Q. And they stopped giving you your</p> <p>16 base pay, you say, in 2007?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Or, rather, reduced your base</p> <p>19 pay, right?</p> <p>20 A. Reduced my base, yes, sir.</p> <p>21 Q. And, in fact, the explanation</p> <p>22 that you received from Mr. Stewart for that</p> <p>23 was that you were -- that they were -- they</p>
<p style="text-align: right;">170</p> <p>1 Q. (BY MR. MORTON) I'll show you</p> <p>2 Defendant's Exhibit Number 11, which is a</p> <p>3 copy of some documents that you produced</p> <p>4 today in this spiral notebook.</p> <p>5 A. All right, sir. This is just</p> <p>6 where I was getting information on stores</p> <p>7 that I've got to get into the computer. And</p> <p>8 the way the stores -- the way I fixed up my</p> <p>9 route to run it, with the store numbers on it</p> <p>10 where I could write them down without, you</p> <p>11 know, having to pull the computer sheet up to</p> <p>12 find them.</p> <p>13 Q. Do any of the documents in</p> <p>14 here -- do you contend that any of the</p> <p>15 documents in here support your claim of age</p> <p>16 discrimination, any of the documents</p> <p>17 contained in this exhibit?</p> <p>18 A. The fact that I'm down there on</p> <p>19 that route does. The fact that there is the</p> <p>20 opportunity for less money to be made on that</p> <p>21 route does.</p> <p>22 One thing I see in these</p> <p>23 documents is Bonnie said that I didn't attend</p>	<p style="text-align: right;">172</p> <p>1 were taking money out to pay for your</p> <p>2 insurance, correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And, in fact, if we -- as we've</p> <p>5 seen, in 2007, you were upside down so far as</p> <p>6 the company is concerned? Your draws</p> <p>7 exceeded your commissions earned, right?</p> <p>8 A. Yes, sir.</p> <p>9 Q. All right. There's a statement</p> <p>10 in this exhibit --</p> <p>11 MR. MORTON: What exhibit is</p> <p>12 this, 10? What's the last --</p> <p>13 MR. ROBERSON: The first page</p> <p>14 right there.</p> <p>15 MR. MORTON: 11?</p> <p>16 THE WITNESS: 11.</p> <p>17 Q. (BY MR. MORTON) All right.</p> <p>18 There's a page in here that's several pages</p> <p>19 in that says, on February or around February</p> <p>20 15th, Tim Trussell called about helper hours</p> <p>21 of 101. He said he --</p> <p>22 A. He justified that because I'd</p> <p>23 been driving the truck seventy-nine hours.</p>

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<p style="text-align: right;">173</p> <p>1 Q. What was the point of his call?</p> <p>2 A. I didn't know, unless he thought</p> <p>3 I was just trying to give a helper pay time</p> <p>4 for no reason. And it just made me wonder if</p> <p>5 I had made a mistake or something.</p> <p>6 Q. Did Mr. Smith drive any of those</p> <p>7 seventy-nine hours or did you drive them all?</p> <p>8 A. I drove them all.</p> <p>9 Q. And your testimony under oath is</p> <p>10 Mr. Smith never drove your truck?</p> <p>11 A. No, sir.</p> <p>12 Q. No, sir, he did not?</p> <p>13 A. My testimony is not -- that Mr.</p> <p>14 Smith never drove my truck. He didn't drive</p> <p>15 my truck during this period of time</p> <p>16 (indicating).</p> <p>17 Q. When did he drive your truck?</p> <p>18 A. He drove my truck when I took my</p> <p>19 morning pills instead of my night pills. And</p> <p>20 he drove it on the log, and the log was</p> <p>21 turned in.</p> <p>22 Q. All right. What do you mean when</p> <p>23 you took your morning pills instead of your</p>	<p style="text-align: right;">175</p> <p>1 A. Well, it takes time to load the</p> <p>2 truck, unload the truck, and it takes time to</p> <p>3 put racks up.</p> <p>4 Q. What was the resolution of Mr.</p> <p>5 Trussell's call to you? How did y'all leave</p> <p>6 it?</p> <p>7 A. He left it with it was possible</p> <p>8 for him to have the hundred and one hours.</p> <p>9 Q. Okay. So, after you explained,</p> <p>10 he agreed with you?</p> <p>11 A. Well, he -- I mean, he had it</p> <p>12 right there in front of him. It wasn't --</p> <p>13 when something comes up out of whack, they're</p> <p>14 going to check it. And that came up out of</p> <p>15 whack, and they checked it and it checked out</p> <p>16 all right, which was -- you know, I'm</p> <p>17 thankful for.</p> <p>18 Q. So, his call to you, then, was</p> <p>19 not anything out of the ordinary?</p> <p>20 A. Well, yes, sir, it was out of the</p> <p>21 ordinary for him to call me about what he</p> <p>22 called me about. It concerned me. I</p> <p>23 wouldn't have written it down.</p>
<p style="text-align: right;">174</p> <p>1 night pills?</p> <p>2 A. I accidentally took the wrong pills</p> <p>3 one day.</p> <p>4 Q. Is that the only time he ever</p> <p>5 drove your truck?</p> <p>6 A. And he has driven around the</p> <p>7 yard, and he's driven from the plant farm to</p> <p>8 the house. But that's the only time he's</p> <p>9 ever driven it on the route.</p> <p>10 Q. Did you have permission for him</p> <p>11 to drive it on the route that day?</p> <p>12 A. Yes, sir.</p> <p>13 Q. From who?</p> <p>14 A. We had a form that we filled out</p> <p>15 on him. And he is a legal driver.</p> <p>16 Q. Was it correct that, as reflected</p> <p>17 on this page of Exhibit 11 that we were</p> <p>18 looking at a minute ago that references</p> <p>19 February the 15th, was it true that, in fact,</p> <p>20 you had a hundred and one helper hours and</p> <p>21 only seventy-nine hours on the GPS?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Why?</p>	<p style="text-align: right;">176</p> <p>1 Q. Well, I thought --</p> <p>2 A. But it was nothing to be -- it</p> <p>3 was straightened out and resolved on the</p> <p>4 phone.</p> <p>5 Q. All right. And when something</p> <p>6 unusual like that pops up, it's not unusual</p> <p>7 for the driver to be called, correct?</p> <p>8 A. Correct.</p> <p>9 Q. Now, the seventy-nine hours here</p> <p>10 that's reflected that you drove, was that all</p> <p>11 reflected in your logbook?</p> <p>12 A. No, sir.</p> <p>13 Q. Why not?</p> <p>14 A. It's illegal to put down that</p> <p>15 number of hours in your logbook. If you put</p> <p>16 your hours in your logbook, nine times out of</p> <p>17 ten, you're going to be illegal. It's</p> <p>18 just -- it's an illegal act that I performed</p> <p>19 doing my duties for Bonnie Plant Farm.</p> <p>20 Q. So, you falsified the logbook?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Did you discuss that with anybody</p> <p>23 at Bonnie?</p>

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<p style="text-align: right;">177</p> <p>1 A. They pretty well understand about 2 it. 3 Q. No, the question was: Did you 4 discuss it with anybody? 5 A. Nobody ever said anything to me 6 about it. I didn't say it to any of them. 7 I've never heard them say, drive legal. 8 Q. Have you ever heard of them say 9 drive illegal? 10 A. I've heard them insinuate it. 11 I've heard them say it was good to go out and 12 unload a load and come back in and get 13 another load and go back out with it. 14 Q. But nobody ever told you to drive 15 illegal? 16 A. No, sir, nobody's ever told me to 17 drive illegal. 18 Q. And you've never told anybody 19 that you were driving illegal, nobody at 20 Bonnie; is that right? 21 A. No, sir. I'm sure that Bonnie 22 wouldn't stand behind you in the event that 23 you had a problem driving illegal like that,</p>	<p style="text-align: right;">179</p> <p>1 true. I'm only ninety-six. 2 Q. No. We don't do that. I don't 3 do it. He doesn't do it. We've seen people 4 in our profession come to serious grief over 5 that. 6 MR. MORTON: Hadn't we? 7 MR. ROBERSON: I'm certain that's 8 true. 9 A. Well, it -- you know, it happens 10 with us. But I'm not -- I'm not trying to 11 shove it off. But I'm trying to be honest 12 with you, sir. 13 Q. (BY MR. MORTON) Good. Well, I 14 appreciate your being honest. 15 There's reference in here about 16 the 2005 sales meeting. It says, my name and 17 an example of my bad work was put in the 18 meeting by Butch Stewart. He will admit that 19 the example he gave was charged by his 20 brother, Joe, to make him look better than 21 me. But according to dollars in sales, that 22 would be debatable. What's that a reference 23 to?</p>
<p style="text-align: right;">178</p> <p>1 but I'm sure that it'd be hard to stay on the 2 payroll if you didn't do it. You have a 3 certain number of hours that you can drive a 4 certain number of hours a day. And our work 5 time and our drive time doesn't coincide a 6 lot. And it's -- to me, it's not something 7 to be -- deny, be upset about, or -- 8 Q. How many times did you falsify 9 the logbook? 10 A. Probably every time I turned one 11 in. 12 Can you write down your hours 13 what you do all day? 14 Q. I do. I have to. 15 A. Well, you're a good man. Do you 16 ever falsify yours? I didn't mean that. I 17 didn't mean that. 18 Q. No, sir, I don't. 19 A. I didn't mean that. But, I mean, 20 ours is a little different. 21 MR. ROBERSON: According to his 22 time sheets, it's a hundred and four. 23 MR. MORTON: Now, that's not</p>	<p style="text-align: right;">180</p> <p>1 A. They made a statement that Butch 2 was just going into a town and saw a store 3 sitting up on a hill and went up and opened 4 it up and got sixteen thousand dollars out of 5 it. That store that was sitting up on that 6 hill, I was working a store that belonged to 7 the same company in a different location in 8 the town. And I had been trying to get into 9 that store and couldn't. And I told Butch 10 that he'd probably have no problem getting 11 into that store. That the garden center 12 manager from the store that I was working at 13 was going to be the garden center manager in 14 that store the next year. And it was a real 15 good plant store. 16 Q. Well, what was said about you in 17 this 2005 sales meeting? 18 A. That I was just riding by the 19 store and never went by there and never saw 20 it, just never paid any attention to it. 21 Q. And you say Butch Stewart said 22 that? 23 A. No, sir, that was kindly</p>

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<p style="text-align: right;">181</p> <p>1 insinuated in there.</p> <p>2 Q. Well, my point is, was your --</p> <p>3 did your name actually even come up in that</p> <p>4 sales meeting? Did anybody mention your name</p> <p>5 in that sales meeting?</p> <p>6 A. No, sir.</p> <p>7 Q. There's also a statement, in</p> <p>8 2006, showed --</p> <p>9 A. Deliveries and not sales.</p> <p>10 Q. What does that mean?</p> <p>11 A. Do you have a copy of the</p> <p>12 exhibit?</p> <p>13 MR. ROBERSON: It's the EEOC</p> <p>14 response.</p> <p>15 A. EEOC response.</p> <p>16 MR. ROBERSON: Bonnie Plant's</p> <p>17 EEOC response.</p> <p>18 A. These are just notes that I wrote</p> <p>19 down today when I read that response. I</p> <p>20 don't keep notes. I don't keep a log. I</p> <p>21 don't --</p> <p>22 Q. (BY MR. MORTON) Now, when you're</p> <p>23 talking about in response in putting down for</p>	<p style="text-align: right;">183</p> <p>1 at the right time, they're really going to</p> <p>2 buy them.</p> <p>3 Q. The question, though, is, the</p> <p>4 difference between deliveries and sales, is</p> <p>5 that the difference between -- I mean, is</p> <p>6 that money that you are responsible for</p> <p>7 collecting and didn't?</p> <p>8 A. No, sir.</p> <p>9 Q. Okay.</p> <p>10 A. It's the difference in the amount</p> <p>11 of plants that you put out and what actually</p> <p>12 sells.</p> <p>13 MR. ROBERSON: They can return</p> <p>14 the plants they don't sell.</p> <p>15 MR. STEWART: Consignment.</p> <p>16 Q. (BY MR. MORTON) Okay. You're</p> <p>17 saying that the figure that appears on the</p> <p>18 EEOC response was deliveries, not sales?</p> <p>19 A. They gave sales in all but one.</p> <p>20 And one, they put deliveries.</p> <p>21 Q. Okay. Then, you say, around</p> <p>22 2000, my route was divided into three routes.</p> <p>23 Bill Rainer told me there would be no more</p>
<p style="text-align: right;">182</p> <p>1 2006 deliveries rather than sales, do you</p> <p>2 mean that the number that was shown was not</p> <p>3 the number you actually collected?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And, in fact, in the chain</p> <p>6 stores, the payment's automatic, right?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And with respect to other stores,</p> <p>9 it's your responsibility to collect the</p> <p>10 money, correct?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And the difference between</p> <p>13 deliveries and sales would be the difference</p> <p>14 between -- would be money that you didn't</p> <p>15 collect; is that right?</p> <p>16 A. We put plants in -- we're only</p> <p>17 paid for what sells. Our gross deliveries</p> <p>18 are higher than our sales figures.</p> <p>19 Q. Okay. But, again --</p> <p>20 A. These people -- I've worked for</p> <p>21 some smart people. They learn if you keep</p> <p>22 those plants out there, somebody's going to</p> <p>23 buy them. And if you've got them out there</p>	<p style="text-align: right;">184</p> <p>1 big routes, it looks like.</p> <p>2 A. Yes, sir.</p> <p>3 Q. What's that a reference to?</p> <p>4 A. Well, it's just something that</p> <p>5 came to my mind when I was sitting down and</p> <p>6 thinking about, you know, how I had been</p> <p>7 mistreated through the years. And it -- when</p> <p>8 it -- when he did that, he sent me all the</p> <p>9 way to the edge of Mississippi to Ferriday,</p> <p>10 Louisiana. And when I'd get over there and</p> <p>11 get out the plants, I'd have to drive back</p> <p>12 all the way across the State of Louisiana</p> <p>13 into east Texas to get another load. And I</p> <p>14 just felt like that, you know, he could have</p> <p>15 figured out another way to have done things.</p> <p>16 But he didn't. And, you know, I'm satisfied.</p> <p>17 I'm happy with everything except for being --</p> <p>18 you know, getting to the age that I am now</p> <p>19 and them feeling like, well, we'll just kick</p> <p>20 him out the door.</p> <p>21 Q. You're not contending that what</p> <p>22 Mr. Rainer did in 2000 was age</p> <p>23 discrimination, are you?</p>

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<p style="text-align: right;">185</p> <p>1 A. No, sir.</p> <p>2 Q. Now, there's indication in this</p> <p>3 exhibit that less money makes it harder to</p> <p>4 pay your bills.</p> <p>5 A. Yes, sir.</p> <p>6 Q. Have you lost a car or a house or</p> <p>7 a boat or anything like that as a result of</p> <p>8 them reducing your pay?</p> <p>9 A. I went into my 401(k) and got</p> <p>10 moneys out of it to offset the difference.</p> <p>11 Q. All right. The question is, did</p> <p>12 you lose any property?</p> <p>13 A. I lost money, actual dollars, out</p> <p>14 of my 401(k) to pay my bills with.</p> <p>15 Q. But that's not the question I'm</p> <p>16 asking you. Did you lose a car, a house, a</p> <p>17 trailer, a piece of property, anything that</p> <p>18 you were paying for on time?</p> <p>19 A. No, sir.</p> <p>20 Q. How much money did you borrow</p> <p>21 from your 401(k)?</p> <p>22 A. I got ten thousand dollars.</p> <p>23 Q. When?</p>	<p style="text-align: right;">187</p> <p>1 reimburses me for the drugs.</p> <p>2 Q. And they've been reimbursing you,</p> <p>3 correct?</p> <p>4 A. Yes, sir, I've had no problem.</p> <p>5 MR. MORTON: Let's go off the</p> <p>6 record for a few minutes.</p> <p>7</p> <p>8 (Whereupon, a brief recess was</p> <p>9 taken.)</p> <p>10</p> <p>11 Q. (BY MR. MORTON) We were talking</p> <p>12 about the schools and churches earlier.</p> <p>13 Weren't you supposed to do those things first</p> <p>14 thing, early in the year?</p> <p>15 A. Well, as a normal -- normally,</p> <p>16 that's the first thing you start doing.</p> <p>17 Q. Well, why didn't you do it first</p> <p>18 thing this year?</p> <p>19 A. Well, when I got down there, they</p> <p>20 suggested I put the racks up and start</p> <p>21 putting the plants in the stores.</p> <p>22 Q. And that was after you'd come</p> <p>23 back to Alabama --</p>
<p style="text-align: right;">186</p> <p>1 A. I'd have to see the paperwork on</p> <p>2 it to remember. Probably November of '07.</p> <p>3 Q. November of 2007?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Is that the only loan you've</p> <p>6 taken out from your 401(k)?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Have you borrowed any other money</p> <p>9 from any other source?</p> <p>10 A. No, sir. I use regular credit</p> <p>11 cards to pay my drug bill with, and I try to</p> <p>12 get that money to turn around and pay. And</p> <p>13 it's hard -- it's hard to do, because I take</p> <p>14 a lot of drugs, as you can see.</p> <p>15 Q. Your health insurance doesn't pay</p> <p>16 for your drugs?</p> <p>17 A. Yes, sir.</p> <p>18 Q. It does?</p> <p>19 A. Yes, sir, on the -- on the turn</p> <p>20 around. See, I've got big deductibles the</p> <p>21 first of the year coming up. And I got</p> <p>22 behind on them. But I have to pay for the</p> <p>23 drugs, and then, they -- then, the company</p>	<p style="text-align: right;">188</p> <p>1 A. Yes, sir.</p> <p>2 Q. -- and drove back out there?</p> <p>3 A. And this is the first year I've</p> <p>4 ever been late. And --</p> <p>5 Q. Can you name any of the schools</p> <p>6 that you have a contract with?</p> <p>7 A. Orange Grove, Skidmore, Saretha.</p> <p>8 I can't think of anymore of them that I have.</p> <p>9 I think I've got --</p> <p>10 Q. Has Mr. Hall talked to you about</p> <p>11 slow sales in your territory?</p> <p>12 A. No, sir.</p> <p>13 Q. Hadn't said a word to you about</p> <p>14 that?</p> <p>15 A. No, sir.</p> <p>16 Q. Has he criticized any aspect of</p> <p>17 your performance?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And what aspect is that?</p> <p>20 A. Being late getting out there,</p> <p>21 having to leave to come up here for this. I</p> <p>22 needed to get the information they wanted in</p> <p>23 on these stores.</p>

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<p style="text-align: right;">189</p> <p>1 Q. Did he criticize you about the</p> <p>2 school and church programs?</p> <p>3 A. Yes, sir, he wants to get those</p> <p>4 done.</p> <p>5 Q. Anything else?</p> <p>6 A. I can't think of anything else</p> <p>7 right off the bat.</p> <p>8 Q. Any of those criticisms</p> <p>9 unjustified as far as you're concerned?</p> <p>10 A. Not one that I can think of.</p> <p>11 Like I say, I've always tried to do what they</p> <p>12 told me to do when they told me to do it.</p> <p>13</p> <p>14 (Whereupon, a discussion was held</p> <p>15 off the record.)</p> <p>16</p> <p>17 Q. (BY MR. MORTON) All right. I'm</p> <p>18 looking at a document called Plaintiff's</p> <p>19 Initial Disclosures. And one of the things</p> <p>20 that this document does, is it lists the name</p> <p>21 of people who may have knowledge about facts</p> <p>22 related to the case. One of the people</p> <p>23 you've listed on here is Johnny Roy</p>	<p style="text-align: right;">191</p> <p>1 anything of that nature?</p> <p>2 A. No, sir.</p> <p>3 Q. The same question for Mr.</p> <p>4 Fendelson.</p> <p>5 A. The same. The same.</p> <p>6 Q. Same answer?</p> <p>7 A. I hadn't really known what to</p> <p>8 discuss with anybody.</p> <p>9 Q. You've listed Adam Alley. What</p> <p>10 do you think he knows about your claims?</p> <p>11 A. I don't remember listing Adam.</p> <p>12 But I think that it would be hearsay what I'd</p> <p>13 have to say what he knows. And if you want</p> <p>14 to hear what somebody told me, I'll tell you.</p> <p>15 Q. That's what I want to hear.</p> <p>16 A. Somebody told me that they heard</p> <p>17 him and Eric Rankin in the office laughing</p> <p>18 one morning. And he was laughing about the</p> <p>19 letter I had written asking for my job back.</p> <p>20 And I don't know that he ever even saw that</p> <p>21 letter or not.</p> <p>22 Q. Who told you that?</p> <p>23 A. Michael Rhodes.</p>
<p style="text-align: right;">190</p> <p>1 Fendelson. What do you think he knows --</p> <p>2 A. He knows --</p> <p>3 Q. -- or may have knowledge about</p> <p>4 this case?</p> <p>5 A. -- that I've filed it.</p> <p>6 That's all.</p> <p>7 Q. He doesn't know anything else?</p> <p>8 A. I don't -- I don't know what else</p> <p>9 he knows.</p> <p>10 Q. Have you talked to him about the</p> <p>11 case?</p> <p>12 A. No, sir.</p> <p>13 Q. Have you put him in touch with</p> <p>14 your counsel?</p> <p>15 A. No, sir.</p> <p>16 Q. It says, Tony, last name unknown,</p> <p>17 Bells, Tennessee. Is that Tony Brown?</p> <p>18 A. It must be Tony Brown.</p> <p>19 Q. What do you think Mr. Brown knows</p> <p>20 about the case?</p> <p>21 A. Just that I filed it probably.</p> <p>22 Q. He doesn't know anything about</p> <p>23 any facts that support your claims or</p>	<p style="text-align: right;">192</p> <p>1 Q. Alley and Michael Rankin?</p> <p>2 A. Eric.</p> <p>3 Q. Eric Rankin. Laughing in the</p> <p>4 office about the letter you wrote. And that</p> <p>5 letter would be this January 10th letter?</p> <p>6 A. Yes, sir, the one asking for my</p> <p>7 job back. I don't even know whether he even</p> <p>8 got a copy of the letter or not.</p> <p>9 Q. And what was the fellow's name</p> <p>10 who told you this?</p> <p>11 A. Michael Rhodes.</p> <p>12 Q. And who is he?</p> <p>13 A. He's my helper from that year.</p> <p>14 And he just -- he called me, asking me about</p> <p>15 it.</p> <p>16 Q. When?</p> <p>17 A. It's been a long time ago.</p> <p>18 Q. Michael Rhodes called you and</p> <p>19 asked about it?</p> <p>20 A. Uh-huh.</p> <p>21 Q. What did he say to you?</p> <p>22 A. He just said he heard Adam and</p> <p>23 them in there laughing about some kind of</p>

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<p style="text-align: right;">193</p> <p>1 letter I had wrote asking for my job back. 2 Q. Where's Michael now? 3 A. I don't really know. He lives up 4 there near Bells. 5 Q. What did you tell him? 6 A. I told him, yeah, I was trying to 7 get back up there. And he said, I sure hope 8 you do. 9 Q. So, this would have been sometime 10 in early 2006? 11 A. Yes, sir, this would have been in 12 that time. 13 Q. And Michael Rhodes was your 14 helper, meaning, somebody hired -- that you 15 hired to work on the truck? 16 A. Yes, sir. 17 Q. Did he ever drive a truck for 18 you? 19 A. No, sir. 20 Q. Not one time? 21 A. No, sir. 22 Q. Anything else Michael Rhodes said 23 to you or you said to him in that</p>	<p style="text-align: right;">195</p> <p>1 He never discussed it with me. 2 Q. And you've never discussed it 3 with him? 4 A. No, sir. 5 Q. And you never discussed age 6 discrimination with him? 7 A. No, sir. 8 Q. Was he ever critical of your job 9 performance? 10 A. Yes, sir. He said I needed to 11 leave more six packs in some places that -- 12 that they were big six pack sellers. 13 Q. Was that criticism justified? 14 A. Yes, sir. 15 Q. Did you leave more six packs? 16 A. Yes, sir. Yes, sir, it was very 17 much so justified. 18 Q. And was he ever critical of your 19 job performance in any other way? 20 A. Not face to face in any way, no. 21 Q. Do you know of any criticisms he 22 made to anybody else? 23 A. No, sir.</p>
<p style="text-align: right;">194</p> <p>1 conversation? 2 A. I'm sure we talked about other 3 things, but that was all that I know of that 4 was said about that. 5 Q. All right. What else do you 6 think Adam Alley knows that relates to your 7 claim? 8 A. I don't know of anything that -- 9 I don't really know. 10 Q. You don't know of anything else 11 he knows? 12 A. No, sir. 13 Q. Nobody's told you anything else? 14 A. No, sir. 15 Q. What about Joseph Padgett? He 16 was your boss in Jasper? 17 A. Uh-huh. 18 Q. Is that correct? 19 A. That's correct. 20 Q. What do you believe he knows that 21 relates to your complaints? 22 A. Probably that it's been filed 23 would be the only thing I know that he knows.</p>	<p style="text-align: right;">196</p> <p>1 Q. Did Adam Alley ever criticize you 2 for not keeping your truck clean -- 3 A. No, sir. 4 Q. -- or not keeping your racks 5 organized? 6 A. No, sir. 7 Q. Did he ever criticize you for not 8 picking up old product in a timely manner? 9 A. No, sir. He -- that's all right. 10 Q. I'm sorry? 11 A. No, sir, he never criticized me 12 for any of that. 13 Q. You list Donald Christopher Hall. 14 That would be Chris Hall, right? 15 A. Yes, sir. 16 Q. He's the station manager in 17 Beeville? 18 A. Yes, sir. 19 Q. What do you believe he knows that 20 might be relevant to your case? 21 A. Nothing but it's filed. 22 Q. Was he ever critical of your job 23 performance in any way beyond what we've</p>

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<p style="text-align: right;">197</p> <p>1 talked about today?</p> <p>2 A. No, sir. He told me that I</p> <p>3 didn't cost him any money last year.</p> <p>4 Q. Did you make him any?</p> <p>5 A. No, sir, but I don't believe any</p> <p>6 money's ever been made on that route that I</p> <p>7 was on. If they can show a profitable</p> <p>8 year -- everybody that has worked that</p> <p>9 route -- well, I can't say everybody. I know</p> <p>10 Alberto had that route, and he went into the</p> <p>11 hole. And he was trying to work his way out</p> <p>12 of it.</p> <p>13 Q. But you don't know whether</p> <p>14 anybody's made a profit on that route or not,</p> <p>15 right?</p> <p>16 A. No, sir.</p> <p>17 Q. Charlie Trussell he was station</p> <p>18 manager at Donaldsonville?</p> <p>19 A. Yes, sir.</p> <p>20 Q. What do you believe he knows that</p> <p>21 might be relevant to your case?</p> <p>22 A. Nothing.</p> <p>23 Q. Nothing at all?</p>	<p style="text-align: right;">199</p> <p>1 hits you --</p> <p>2 A. I want to say somewhere around</p> <p>3 here (indicating).</p> <p>4 Q. -- the middle of your chest?</p> <p>5 Have you ever measured it?</p> <p>6 A. No, sir.</p> <p>7 MR. MORTON: I don't believe I've</p> <p>8 got anything else.</p> <p>9 MR. ROBERSON: I've got a few</p> <p>10 questions.</p> <p>11</p> <p>12 EXAMINATION BY MR. ROBERSON:</p> <p>13</p> <p>14 Q. Mr. Watson, you go by Terry,</p> <p>15 don't you?</p> <p>16 A. That's right.</p> <p>17 Q. I want to talk about two periods</p> <p>18 of time. I want to talk about up until you</p> <p>19 had your knee surgery. That'd be knee</p> <p>20 surgery in the fall of 2005. You worked for</p> <p>21 this -- for Joe Stewart and for AFC for over</p> <p>22 twenty years --</p> <p>23 A. Yes, sir.</p>
<p style="text-align: right;">198</p> <p>1 A. Nothing at all.</p> <p>2 Q. Did he ever do anything that you</p> <p>3 thought was discriminatory, Mr. Trussell?</p> <p>4 A. No, sir.</p> <p>5 Q. How about Bill Rainer, you've</p> <p>6 listed him. What do you think he knows that</p> <p>7 might be relevant to your claims?</p> <p>8 A. Nothing but that it's filed. I</p> <p>9 think he would know that a claim had been</p> <p>10 filed.</p> <p>11 Q. Anything else?</p> <p>12 A. That's all.</p> <p>13 Q. How high up is the bed of your</p> <p>14 truck from the ground; do you know?</p> <p>15 A. The bed of the truck?</p> <p>16 Q. Right.</p> <p>17 A. When you walk up to it, it hits</p> <p>18 you about there (indicating), if you're my</p> <p>19 size, my height.</p> <p>20 Q. So, it would be what,</p> <p>21 somewhere --</p> <p>22 A. Three and a half, four feet.</p> <p>23 Q. Let's see. You're six one. That</p>	<p style="text-align: right;">200</p> <p>1 Q. -- right?</p> <p>2 And never had a problem that</p> <p>3 you --</p> <p>4 A. No, sir.</p> <p>5 Q. -- of any significance?</p> <p>6 MR. MORTON: I'll object to your</p> <p>7 leading him.</p> <p>8 MR. ROBERSON: Please do.</p> <p>9 MR. MORTON: No, I mean, do you</p> <p>10 want to give me a standing objection or do</p> <p>11 you want me to object to every question?</p> <p>12 MR. ROBERSON: Whatever you want.</p> <p>13 Whatever is easier for you.</p> <p>14 Q. And in those twenty something</p> <p>15 years, how many routes did you have?</p> <p>16 A. I had two routes until I went to</p> <p>17 Bells, Tennessee.</p> <p>18 Q. Okay. Now, when you got</p> <p>19 transferred to Bells, Tennessee, at whose</p> <p>20 request was that?</p> <p>21 A. That was my request.</p> <p>22 Q. You wanted a shorter route?</p> <p>23 A. I wanted a shorter route, and</p>

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<p style="text-align: right;">201</p> <p>1 Butch wanted a --</p> <p>2 Q. Longer route?</p> <p>3 A. -- longer route.</p> <p>4 Q. Okay. And so, you initiated --</p> <p>5 you and Butch initiated that transaction?</p> <p>6 A. We initiated it together.</p> <p>7 Q. Before the fall of 2005, had</p> <p>8 AFC -- I call them Bonnie Plant. But had</p> <p>9 the -- had the company you worked for ever</p> <p>10 transferred you involuntarily?</p> <p>11 A. No, sir.</p> <p>12 Q. Had they ever written you up or</p> <p>13 disciplined you?</p> <p>14 A. No, sir.</p> <p>15 Q. Did y'all have any kind of a</p> <p>16 formal written evaluation as to your job</p> <p>17 performance, your supervisor come and sit</p> <p>18 down with you and go over some annual job</p> <p>19 performance?</p> <p>20 A. I never saw one.</p> <p>21 Q. Okay. But they had incentives,</p> <p>22 sales incentives, right?</p> <p>23 A. Right.</p>	<p style="text-align: right;">203</p> <p>1 the settlement statement, if you earned any</p> <p>2 commission, you get that from 2004 in 2005 --</p> <p>3 MR. MORTON: Object to the --</p> <p>4 Q. (BY MR. ROBERSON) -- right?</p> <p>5 MR. MORTON: Object to the form.</p> <p>6 Q. (BY MR. ROBERSON) Is that right?</p> <p>7 A. That's right.</p> <p>8 Q. And so, that means that your</p> <p>9 earnings were at least always partially</p> <p>10 trailing the next year?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Correct?</p> <p>13 A. Yes, sir.</p> <p>14 Q. So, when you told the EEOC you</p> <p>15 earned forty-five thousand, you would have</p> <p>16 gotten part of that in 2006, that income?</p> <p>17 A. That's correct.</p> <p>18 MR. MORTON: Object to the form.</p> <p>19 Q. (BY MR. ROBERSON) You would have</p> <p>20 received that in the next year, your</p> <p>21 commission income?</p> <p>22 A. That's correct.</p> <p>23 Q. Okay. And they've got a -- the</p>
<p style="text-align: right;">202</p> <p>1 Q. The whole time you worked there,</p> <p>2 you had been on a commission, right?</p> <p>3 A. Right.</p> <p>4 Q. And you get a draw that offsets</p> <p>5 the commission --</p> <p>6 MR. MORTON: Object to the form.</p> <p>7 A. That's right.</p> <p>8 Q. (BY MR. ROBERSON) -- correct?</p> <p>9 I mean, a draw against the</p> <p>10 commission?</p> <p>11 A. A draw against commission, right.</p> <p>12 Q. So, your income, Terry, what</p> <p>13 shows up on your W-2, is not -- is not ever</p> <p>14 what you actually earned that year; is that</p> <p>15 correct?</p> <p>16 A. That's correct.</p> <p>17 MR. MORTON: Object to the form.</p> <p>18 Q. (BY MR. ROBERSON) In other</p> <p>19 words, you get on your W-2, let's say for</p> <p>20 2005, are the draws you received during 2005,</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. And then, you get the commission,</p>	<p style="text-align: right;">204</p> <p>1 compensation at Bonnie Plant, does it change</p> <p>2 from time to time?</p> <p>3 A. It changes every year.</p> <p>4 Q. And so, the percentage of</p> <p>5 commission, everything else may change from</p> <p>6 year to year?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And the goals -- there's a</p> <p>9 breakdown on the commission, isn't there?</p> <p>10 Don't you have to exceed a sales goal --</p> <p>11 A. Yes, sir.</p> <p>12 Q. -- to get a higher commission</p> <p>13 rate?</p> <p>14 A. To get a higher percentage.</p> <p>15 Q. So, that's going to change every</p> <p>16 year?</p> <p>17 A. It's going to change every year.</p> <p>18 Q. And I'm guessing, now, but I'm</p> <p>19 guessing it don't get lower, your sales goal,</p> <p>20 it gets higher?</p> <p>21 A. It gets higher.</p> <p>22 MR. MORTON: Object to the form.</p> <p>23 Q. (BY MR. ROBERSON) All right.</p>

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<p style="text-align: right;">205</p> <p>1 Well, I'm going to -- and is this --</p> <p>2 MR. ROBERSON: Dent, did you make</p> <p>3 this an exhibit (indicating)? That's 2000 --</p> <p>4 you gave it to me.</p> <p>5 MR. MORTON: Yes.</p> <p>6 MR. ROBERSON: Can you find that</p> <p>7 for me? I want to keep the number and ask</p> <p>8 him about it.</p> <p>9 Q. Oh, here we go. It's Exhibit 10,</p> <p>10 Terry. Let me show you what Mr. --</p> <p>11 MR. MORTON: Morton.</p> <p>12 Q. (BY MR. ROBERSON) -- Morton,</p> <p>13 excuse me, marked as Exhibit 10.</p> <p>14 And this shows commission for the</p> <p>15 spring of 2005. And you are Arthur T.</p> <p>16 Watson, right?</p> <p>17 A. That's me.</p> <p>18 Q. Okay. And where were you working</p> <p>19 in the spring of 2005?</p> <p>20 A. I was working in Bells,</p> <p>21 Tennessee.</p> <p>22 Q. Okay. And --</p> <p>23 A. In the fall, I was working in --</p>	<p style="text-align: right;">207</p> <p>1 And it shows -- you've got some</p> <p>2 additional compensation. I'm assuming that's</p> <p>3 because you were over the sales goal. That's</p> <p>4 the way that worked, right?</p> <p>5 A. Yes, sir. If you go over the</p> <p>6 sales goal, you get paid more money.</p> <p>7 Q. So, you get a base commission up</p> <p>8 to the sales goal, correct?</p> <p>9 A. You get a base pay.</p> <p>10 Q. Okay.</p> <p>11 A. And you get a base commission up</p> <p>12 to dollar collected, and then, the commission</p> <p>13 goes higher for more dollars.</p> <p>14 Q. Okay. Now, in the spring of</p> <p>15 2004, you also -- that was the first year you</p> <p>16 worked in Bells, right?</p> <p>17 A. Right.</p> <p>18 Q. And it shows how much you</p> <p>19 collected that year on the second page of</p> <p>20 this document, Exhibit 10. And that's two</p> <p>21 hundred and fifty-three thousand, right?</p> <p>22 A. Yes, sir. They took two stores</p> <p>23 off of my route that year to go into '5.</p>
<p style="text-align: right;">206</p> <p>1 Q. All right. Well, look here</p> <p>2 for what it says the collected sales were in</p> <p>3 the spring of 2005. Can you read what that</p> <p>4 figure is on Exhibit 10?</p> <p>5 A. Three thirty-six.</p> <p>6 Q. Oh, that's the fall and -- I'm</p> <p>7 just -- I'm just -- I'm asking you the</p> <p>8 spring, just that figure. I may be asking</p> <p>9 you something you can't see.</p> <p>10 A. The collected figure for the</p> <p>11 spring --</p> <p>12 Q. Yeah.</p> <p>13 A. -- was 302,703.95.</p> <p>14 Q. So, does that means you sold</p> <p>15 three hundred -- over three hundred thousand</p> <p>16 dollars worth of plants, collected the money</p> <p>17 for them?</p> <p>18 A. Yes, sir.</p> <p>19 Q. All right. And it shows that you</p> <p>20 got twelve percent of sales. That's the</p> <p>21 first part of your commission --</p> <p>22 A. Yes.</p> <p>23 Q. -- right?</p>	<p style="text-align: right;">208</p> <p>1 They took a nice big, good selling Wal-Mart</p> <p>2 and a Kmart off of it.</p> <p>3 Q. Okay. But in 2004, the spring,</p> <p>4 you sold two hundred fifty -- over two</p> <p>5 hundred and fifty thousand dollars worth of</p> <p>6 plants?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And here, you actually got</p> <p>9 sixteen percent of collected sales. So,</p> <p>10 that's what we're talking about. Over here,</p> <p>11 it was twelve percent, see, in 2005; is that</p> <p>12 right?</p> <p>13 A. That's right.</p> <p>14 Q. Okay. Now, so, if you had the</p> <p>15 same route -- same route number, even though</p> <p>16 I understand it changed a little bit, you</p> <p>17 grew the route from 2004 to 2005 by over</p> <p>18 fifty thousand dollars, correct?</p> <p>19 A. Correct.</p> <p>20 Q. And that'd be over twenty</p> <p>21 percent?</p> <p>22 A. That would be over twenty</p> <p>23 percent.</p>

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<p style="text-align: right;">209</p> <p>1 Q. Okay. So, those were the numbers 2 you were making on the short route. And you 3 asked for the short route -- 4 A. Yes, sir. 5 Q. -- to make it easier with your -- 6 as you got older and had health problems, it 7 would be less demanding, less hours for you 8 to work? 9 A. Yes, sir. 10 Q. All right. Now, after your knee 11 surgery -- Tate is the safety -- 12 A. Safety director. 13 Q. Safety director. And so, any 14 medical condition you have, you have to get 15 his approval to go back driving a truck? 16 A. Right. 17 Q. Is that right? 18 A. That's right. 19 Q. Does he work with you about your 20 health -- your cards and everything? 21 A. He does the drug test, and he 22 checks your health cards and -- 23 Q. And I know you didn't directly</p>	<p style="text-align: right;">211</p> <p>1 A. -- whether you passed or failed. 2 Q. (BY MR. ROBERSON) All right. 3 And so, while that process is ongoing, you 4 went to the sales meeting in Auburn, right, 5 in 2005? 6 A. Right. 7 Q. The one that Bonnie Plant told 8 the EEOC you didn't go to -- 9 A. Yes, sir. 10 Q. -- right? 11 That's a lie, isn't it? 12 MR. MORTON: Object to the form. 13 A. Yes, sir. 14 Q. (BY MR. ROBERSON) And then, in 15 November, you had a discussion with Joe 16 Stewart, right? 17 A. Right. 18 Q. And that's when you found out you 19 weren't going back to -- 20 A. Going back to Bells, Tennessee. 21 Q. -- Bells? 22 Okay. And that's the first time 23 you mentioned the words "age discrimination",</p>
<p style="text-align: right;">210</p> <p>1 report to Tate -- I mean, he wasn't over 2 sales, but if you wanted to work, you had to 3 have that card -- 4 A. Yes. 5 Q. -- right? 6 MR. MORTON: Object to the form. 7 A. If you don't pass the physical 8 examination and the drug test, you can't go 9 to work. 10 Q. (BY MR. ROBERSON) You ain't 11 working, are you? 12 All right. So, because of your 13 surgeries in the fall, you had to go back 14 through Tate; is that right? 15 A. That's right. 16 MR. MORTON: Object to form. 17 Q. (BY MR. ROBERSON) Did he have 18 any say-so? 19 A. Yes, sir, he -- 20 Q. He had to clear you? 21 A. He had to clear it. He had to 22 clear it -- 23 MR. MORTON: Object to the form.</p>	<p style="text-align: right;">212</p> <p>1 correct? 2 MR. MORTON: Object to the form. 3 A. Correct. 4 Q. (BY MR. ROBERSON) Didn't you 5 have a conversation with Joe? 6 A. Yes, sir. 7 Q. Did you tell him any -- did you 8 make any complaint about what you perceived 9 to be what could be age discrimination? 10 A. I sure did. 11 MR. MORTON: Object to the form. 12 Q. (BY MR. ROBERSON) Okay. So, 13 that's your first protected activity. Do you 14 know what a protected activity is? 15 A. No, sir. 16 Q. Okay. Well, then, you gave these 17 two letters -- January and February, you gave 18 those two letters to Tate, right? 19 A. Right. 20 Q. And you were doing that because 21 he had to approve you going back to driving a 22 truck, right? 23 A. Right.</p>

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<p style="text-align: right;">213</p> <p>1 Q. He's not your up-line supervisor, 2 but if he told you to do something, you had 3 to do it? 4 A. You had to do it. 5 Q. In the spring season in Bells, 6 Tennessee, you don't start work until 7 sometime in late February, do you, or -- 8 MR. MORTON: Object to the form. 9 Q. (BY MR. ROBERSON) What time do 10 you start work? 11 A. Mid February to late February. 12 It depends on the weather that year. 13 Q. Okay. Well, you got cleared from 14 your doctor to go to full duty before the 15 season started; is that correct? 16 MR. MORTON: Object to the form. 17 A. That's correct. 18 Q. (BY MR. ROBERSON) And Joe -- I'm 19 sorry. Leslie Branum took your route; is 20 that correct? 21 A. That's correct. 22 MR. MORTON: Object to the form. 23 Q. (BY MR. ROBERSON) I'm going to</p>	<p style="text-align: right;">215</p> <p>1 A. Working my route. 2 MR. MORTON: Object to the form. 3 Q. (BY MR. ROBERSON) Do you see 4 that? What is that number? 5 A. 378,622.05. 6 Q. And what were his gross 7 commissions for that year, right there, that 8 number (indicating)? 9 A. Eighty-two thousand, a hundred 10 and seventy-eight dollars and thirty-four 11 cents. 12 Q. Now, you don't know that he had 13 the same route you had, correct? You don't 14 know -- 15 A. I don't know that. 16 Q. You don't know what stores he had 17 on his route? 18 A. No, sir. 19 Q. Let me show you what's been 20 marked as Defendant's Exhibit 1, which is 21 your sales for the spring of 2006. And, 22 first of all, Terry, you got sent to 23 Louisiana, right?</p>
<p style="text-align: right;">214</p> <p>1 show you -- 2 MR. ROBERSON: I don't think 3 you've marked this one. Have you got a 4 plaintiff's sticker? 5 This is AFC Document 00626. It's 6 something y'all produced this week, marked 7 confidential. 8 Q. So, don't tell anybody about it, 9 Terry. 10 MR. ROBERSON: Mark that 11 Plaintiff's 1, please, ma'am. 12 13 (Whereupon, Plaintiff's Exhibit 1 14 was marked and copy of same is 15 attached hereto.) 16 17 Q. (BY MR. ROBERSON) All right. 18 I'm going to show you a document that Bonnie 19 Plant Farms made available to me shortly 20 before your deposition and show you what 21 Leslie Branum, his commissions for the spring 22 of 2006. Do you see what number he collected 23 working your route?</p>	<p style="text-align: right;">216</p> <p>1 A. Right. 2 MR. MORTON: Object to the form. 3 Q. (BY MR. ROBERSON) Was that 4 voluntary? Did you want to go there? 5 A. No, sir. 6 Q. They told you to go? 7 A. Yes, sir. 8 Q. Were you on a commission? 9 A. No, sir. 10 Q. Had you always been on a 11 commission? 12 A. Yes, sir. 13 Q. That's a difference, isn't it, 14 after your complaint of discrimination, 15 right? 16 A. Right. 17 Q. Well, do you know what -- have 18 you -- what this -- these figures are in 19 Exhibit 1, do you know how they calculated 20 that for the route you ultimately took over 21 in Jasper in 2006? 22 A. No, sir. 23 Q. Did you work the route from its</p>

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<p style="text-align: right;">217</p> <p>1 beginning, when the season opened, till the</p> <p>2 end of the season?</p> <p>3 A. No, sir.</p> <p>4 Q. So, you didn't have an</p> <p>5 opportunity to run the whole route, did you?</p> <p>6 A. No, sir.</p> <p>7 Q. Do you know how they figured what</p> <p>8 you did on that route?</p> <p>9 A. No, sir, I have no idea.</p> <p>10 Q. Okay. Well, we know what they</p> <p>11 paid a commission on on that route, or what</p> <p>12 they claim the commission was, was a hundred</p> <p>13 and seventy-three thousand dollars, right?</p> <p>14 A. Right.</p> <p>15 Q. Now, before these transfers two</p> <p>16 times after your complaint, had you ever not</p> <p>17 made -- gone in the hole on your commission?</p> <p>18 A. I had never gone in the hole on</p> <p>19 my commission.</p> <p>20 Q. In other words, your commission</p> <p>21 was always more than your draw?</p> <p>22 A. I always got a check.</p> <p>23 Q. And these draws they're claiming</p>	<p style="text-align: right;">219</p> <p>1 apparently.</p> <p>2 MR. MORTON: Object to the side</p> <p>3 bar, Counsel. Ask questions. Don't make</p> <p>4 comments.</p> <p>5 Q. (BY MR. ROBERSON) Well, do you</p> <p>6 see what net collected sales for 2007 are,</p> <p>7 one thirty-three --</p> <p>8 A. One thirty-three thousand, eight</p> <p>9 hundred and eighty-five dollars and fifty</p> <p>10 cents.</p> <p>11 Q. Okay. Now, the route you're</p> <p>12 working in Texas, or you worked in 2007, is</p> <p>13 that a long route or a short route?</p> <p>14 A. That's a long route.</p> <p>15 Q. The kind of route you asked to</p> <p>16 get off of?</p> <p>17 A. The kind of route I would like to</p> <p>18 get off of.</p> <p>19 Q. Okay. And, in fact, they know --</p> <p>20 Bonnie Plant knows every hour that that truck</p> <p>21 is being operated, don't they?</p> <p>22 A. Yes, sir.</p> <p>23 Q. They've got a GPS in that truck,</p>
<p style="text-align: right;">218</p> <p>1 that they paid you too much, did they take</p> <p>2 out when you were working just on a draw; do</p> <p>3 you know?</p> <p>4 A. I don't know.</p> <p>5 Q. Well, that don't hardly seem</p> <p>6 right if they didn't, does it?</p> <p>7 MR. MORTON: Object to the form.</p> <p>8 Q. (BY MR. ROBERSON) I mean, how</p> <p>9 can you --</p> <p>10 A. It's sure not right.</p> <p>11 Q. Now, let me show you Exhibit 3,</p> <p>12 which is your -- you ain't ever seen this</p> <p>13 document till you got over here, had you?</p> <p>14 A. No, sir.</p> <p>15 Q. Have you got your W-2 yet for</p> <p>16 2007?</p> <p>17 A. No, sir.</p> <p>18 Q. What's today's date? March 25th?</p> <p>19 A. March 25th.</p> <p>20 Q. Huh. Got your settlement</p> <p>21 statement for 2007?</p> <p>22 A. No, sir.</p> <p>23 Q. Okay. Mr. Morton's got it,</p>	<p style="text-align: right;">220</p> <p>1 don't they?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And that sends a signal when</p> <p>4 you're moving and when you're not, right?</p> <p>5 A. Yes, sir.</p> <p>6 Q. They know your location. They</p> <p>7 know how many hours you work and drive the</p> <p>8 truck, don't they?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And they can compare how many</p> <p>11 hours your truck's moving to your logbook if</p> <p>12 they were really interested in that, couldn't</p> <p>13 they?</p> <p>14 A. Yes, sir.</p> <p>15 Q. In your twenty something years at</p> <p>16 Bonnie Plant Farms, has anybody ever</p> <p>17 disciplined you for working too many hours?</p> <p>18 A. No, sir.</p> <p>19 Q. You work on a commission, don't</p> <p>20 you?</p> <p>21 A. Yes, sir.</p> <p>22 Q. If you don't sell, you don't eat,</p> <p>23 right?</p>

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<p style="text-align: right;">221</p> <p>1 A. Right.</p> <p>2 Q. In fact, do you have any idea how</p> <p>3 many million dollars of plants you've sold</p> <p>4 for Joe Stewart and Bonnie Plant Farms?</p> <p>5 A. No idea at all.</p> <p>6 Q. Well, you'd think that working</p> <p>7 for a guy for twenty something years and</p> <p>8 making him a bunch of money, that he'd be</p> <p>9 loyal to you; wouldn't you think that?</p> <p>10 MR. MORTON: Object to the form.</p> <p>11 A. I would have thought that.</p> <p>12 Q. (BY MR. ROBERSON) Well, he ain't</p> <p>13 done you any favors since you complained of</p> <p>14 age discrimination, has he?</p> <p>15 MR. MORTON: Object to the form.</p> <p>16 A. No, sir, he has not.</p> <p>17 Q. (BY MR. ROBERSON) He's put you</p> <p>18 on four routes --</p> <p>19 MR. STEWART: This is bullshit.</p> <p>20 MR. MORTON: Well, just calm</p> <p>21 down.</p> <p>22 MR. STEWART: I was trying to</p> <p>23 give this boy a job to where he could draw a</p>	<p style="text-align: right;">223</p> <p>1 you a bunch of questions about facts that you</p> <p>2 have, that you know about. Do you know of</p> <p>3 any reason why they would have to change your</p> <p>4 truck the second year you were in Bells?</p> <p>5 A. None whatsoever.</p> <p>6 Q. Do you know any reason that</p> <p>7 prevented them from giving you a truck with</p> <p>8 an air ride seat?</p> <p>9 A. None whatsoever.</p> <p>10 Q. Were you the oldest salesman up</p> <p>11 there at Bells?</p> <p>12 MR. MORTON: Object to the form.</p> <p>13 A. I was the oldest salesman up</p> <p>14 there.</p> <p>15 Q. (BY MR. ROBERSON) Did you have</p> <p>16 the most seniority?</p> <p>17 A. I had --</p> <p>18 MR. MORTON: Object to the form.</p> <p>19 A. -- the most seniority up there.</p> <p>20 Q. (BY MR. ROBERSON) Was, in fact,</p> <p>21 2005 one of your best years for production?</p> <p>22 MR. MORTON: Object to the form.</p> <p>23 A. It was one of the best years on</p>
<p style="text-align: right;">222</p> <p>1 check, and I'll be goddamned if I'm going to</p> <p>2 sit here and listen to this.</p> <p>3</p> <p>4 (Whereupon, Mr. Stewart leaves</p> <p>5 the room.)</p> <p>6</p> <p>7 Q. (BY MR. ROBERSON) Has he put you</p> <p>8 on routes that earned less money than the</p> <p>9 Bells, Tennessee, route?</p> <p>10 A. Yes, sir.</p> <p>11 MR. MORTON: Object to the form.</p> <p>12 Q. (BY MR. ROBERSON) Has your</p> <p>13 compensation been lowered?</p> <p>14 A. Yes, sir.</p> <p>15 MR. MORTON: Object to the form.</p> <p>16 Q. (BY MR. ROBERSON) Mr. Watson,</p> <p>17 was there any salesman up there in Tennessee</p> <p>18 that were over -- in the year that you sold</p> <p>19 three hundred thousand dollars worth of</p> <p>20 product in 2005, how old were you?</p> <p>21 A. I was sixty-one years old. I was</p> <p>22 sixty years old in 2005, turned sixty-one.</p> <p>23 Q. Okay. Now, Mr. Morton has asked</p>	<p style="text-align: right;">224</p> <p>1 that route, that that route had ever had.</p> <p>2 Q. (BY MR. ROBERSON) Did they give</p> <p>3 you any explanation for why you couldn't work</p> <p>4 that route in 2006.</p> <p>5 A. None.</p> <p>6 Q. Other than you just weren't</p> <p>7 working out?</p> <p>8 A. I just wasn't working out.</p> <p>9 Q. And how many places have you been</p> <p>10 since then? How many places have you worked?</p> <p>11 Donaldsonville?</p> <p>12 A. Donaldsonville, Louisiana;</p> <p>13 Jasper, Alabama; and two routes in Beeville,</p> <p>14 Texas.</p> <p>15 Q. And every time, does it seem like</p> <p>16 you're going backwards?</p> <p>17 A. Every time --</p> <p>18 MR. MORTON: Object to the form.</p> <p>19 A. -- since I've filed that, it has</p> <p>20 gone backwards.</p> <p>21 MR. ROBERSON: Thank you, sir. I</p> <p>22 don't have anything else.</p> <p>23</p>

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<p style="text-align: right;">225</p> <p>1 FURTHER EXAMINATION BY MR. MORTON.</p> <p>2</p> <p>3 Q. Your lawyer asked you if you had</p> <p>4 ever been written up prior to your knee</p> <p>5 surgery, or your surgery in the off season in</p> <p>6 2005. Have you ever been written up since</p> <p>7 then?</p> <p>8 A. I've never been written up that I</p> <p>9 know of.</p> <p>10 Q. Now, your lawyer asked you some</p> <p>11 questions about your --</p> <p>12 A. I need to go to the restroom.</p> <p>13 Can I come right back and answer?</p> <p>14 Q. Sure.</p> <p>15</p> <p>16 (Whereupon, a brief recess was</p> <p>17 taken.)</p> <p>18</p> <p>19 Q. (BY MR. MORTON) All right. Your</p> <p>20 lawyer asked you some questions about what</p> <p>21 your W-2 shows so far as your earnings are</p> <p>22 concerned. You're not saying that you got</p> <p>23 income from Bonnie that's not reported on the</p>	<p style="text-align: right;">227</p> <p>1 I was over my operations.</p> <p>2 Q. And --</p> <p>3 A. Through the whole time, I had</p> <p>4 anticipated going back to work. But that was</p> <p>5 when I got the record from my doctor, in</p> <p>6 February.</p> <p>7 Q. That was when you got something</p> <p>8 from your doctor telling you you could go</p> <p>9 back --</p> <p>10 A. Yes, sir.</p> <p>11 Q. -- to work, correct?</p> <p>12 And, in fact, prior to that time,</p> <p>13 in November and December, you had not only</p> <p>14 been unable to pass the physical</p> <p>15 rehabilitation exercises, you hadn't even</p> <p>16 been able to participate in them, correct?</p> <p>17 A. Correct.</p> <p>18 Q. And, in fact, you don't know when</p> <p>19 Leslie Branum was assigned that route in</p> <p>20 Bells, do you?</p> <p>21 A. No, sir.</p> <p>22 Q. Don't know when that decision was</p> <p>23 made --</p>
<p style="text-align: right;">226</p> <p>1 W-2 somewhere, are you?</p> <p>2 A. No, sir.</p> <p>3 Q. Now, at the time that you found</p> <p>4 out you weren't going back to Bells, you had</p> <p>5 not been cleared by your doctor to come back</p> <p>6 to work, had you?</p> <p>7 A. I had not been stopped from going</p> <p>8 back to work, and nobody told me anything</p> <p>9 about not going back to work.</p> <p>10 Q. I'm talking about your doctor.</p> <p>11 In fact, you didn't get released to go back</p> <p>12 to work, as you told me earlier, until early</p> <p>13 February, '06 without restrictions; isn't</p> <p>14 that right?</p> <p>15 A. That may be. That's probably --</p> <p>16 that may be right, but I don't ever remember</p> <p>17 being told that I couldn't go back to work.</p> <p>18 Q. Well, if you had been told you</p> <p>19 couldn't --</p> <p>20 A. I remember -- I remember them --</p> <p>21 I remember having a problem -- you know,</p> <p>22 you've got to get over your operations. And</p> <p>23 in February, he wrote me a letter saying that</p>	<p style="text-align: right;">228</p> <p>1 A. No, sir.</p> <p>2 Q. -- at all?</p> <p>3 And, in fact, in January of '06</p> <p>4 and up to the point that your doctor finally</p> <p>5 did release you, the company didn't have any</p> <p>6 way of knowing when you'd be able to drive,</p> <p>7 did it?</p> <p>8 A. They had no reason to believe</p> <p>9 that I wouldn't be back to work.</p> <p>10 Q. Well, they certainly knew that</p> <p>11 you hadn't been able to even --</p> <p>12 A. They knew that I hadn't --</p> <p>13 Q. -- participate?</p> <p>14 A. That's right.</p> <p>15 Q. You hadn't even been able to</p> <p>16 participate in the physical rehabilitation</p> <p>17 exercises on two different occasions,</p> <p>18 correct?</p> <p>19 A. Correct.</p> <p>20 Q. And they had nothing from your</p> <p>21 doctor releasing you to go back to work,</p> <p>22 correct?</p> <p>23 A. Correct.</p>

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1 Q. And they didn't get anything from
2 your doctor releasing you to go back to work
3 until February, correct?
4 A. Correct.
5 Q. And prior to that time, back to
6 my original question, they didn't have any
7 way of knowing when you'd be able to go back
8 to work, did they, sir?
9 A. Correct.
10 Q. Now, so far as Tate Gatlin is
11 concerned, Tate Gatlin reviews the documents
12 to take sure that you have the appropriate
13 medical and other permissions to allow you to
14 drive the truck --
15 A. Yes, sir.
16 Q. -- correct?
17 That is his function, right?
18 A. Yes, sir.
19 Q. You were saying with respect to
20 the sales in Jasper on Defendant's Exhibit 1,
21 you don't know how those were calculated,
22 right?
23 A. No, sir.

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1 Q. So, you don't know whether you
2 got credit for what had been sold on that
3 route before you got there or not?
4 A. No, sir.
5 Q. Now, you're talking about having
6 a long route in Texas.
7 A. Yes, sir.
8 Q. And the reason you don't want a
9 long route anymore is that it's hard on you
10 physically, correct?
11 A. Correct.
12 Q. And it's hard on you physically
13 because of your physical condition, correct?
14 A. Correct.
15 Q. And do you think it's hard on you
16 physically because of your age in addition to
17 your physical condition?
18 A. No, sir.
19 Q. Okay. So, it's your physical
20 condition that makes it hard on you to run a
21 long route, right?
22 A. I've been riding in those trucks
23 for a lot of years.

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1 Q. Well, the answer to the question
2 is, yes, correct?
3 A. It is, yes.
4 Q. And, in fact, initially, when you
5 asked to get off a long route, the company
6 honored your request, correct?
7 A. Yes.
8 Q. And you were what, sixty years
9 old at that time?
10 A. Yes, sir.
11 Q. And at the age of sixty, they
12 moved you to Bells, Tennessee, at your
13 request, correct?
14 A. Yes, sir.
15 Q. And they gave you a truck with an
16 air ride suspension and an air ride seat,
17 correct?
18 A. Yes, sir.
19 Q. And you said you didn't know of
20 any reason why they couldn't give you an air
21 ride seat the second time around. But did
22 you ever ask why?
23 A. Yes, sir.

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1 Q. And what were you told?
2 A. I was never given an answer.
3 Just somebody else had the trucks this year.
4 Q. And do you even know how trucks
5 were assigned that year at Bells?
6 A. No, sir.
7 Q. Do you know whether other people
8 had already asked for the air ride trucks?
9 A. No, sir.
10 Q. And for all you know, the trucks
11 with the air ride seats had been given out to
12 people who asked before you did, correct?
13 A. Well, I've never -- that's true.
14 Q. Okay.
15 A. I've never known anybody to
16 request a truck like that but --
17 Q. Well, it's a lot more
18 comfortable --
19 A. And I'm the only person that
20 knows that -- that I know that requested an
21 air ride seat.
22 Q. And the air ride seats are more
23 comfortable?

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<p style="text-align: right;">233</p> <p>1 A. No, sir, it takes more shock out 2 of you when you're -- when you're hitting 3 bumps on the road. 4 Q. Smooths out the ride? 5 A. Smooths out the ride. 6 Q. You wouldn't agree that that's 7 more comfortable? 8 A. Well, some of the other seats may 9 be more where you just fall in them, you 10 know, and sit back on the cushion and be more 11 comfortable, depending on the condition of 12 the person that's sitting in the -- in the 13 seat. 14 MR. MORTON: All right. I don't 15 think I've got anything else. 16 17 FURTHER EXAMINATION BY MR. ROBERSON: 18 19 Q. Hey, Terry, did they know who 20 your doctors were at Bonnie Plant? 21 A. Yes. 22 Q. It's their insurance, right? 23 They knew every time you went to the doctor?</p>	<p style="text-align: right;">235</p> <p>1 Plant, right? 2 A. Right. 3 Q. Who scheduled your deposition? 4 A. Bonnie Plant. 5 Q. You saw Joe Stewart. He knew you 6 were being deposed, didn't he? 7 A. (Witness nods head.) 8 Q. Did he make arrangements to cover 9 your route while you traveled here? 10 A. No. 11 Q. Did anybody? 12 A. No. 13 Q. Is it a secret that you're being 14 deposed? 15 A. No, it's not a secret. 16 Q. Well, why in the world wouldn't 17 they know? Can you think of any reason? 18 A. None at all. 19 Q. Okay. I can't either. I mean, 20 if it's so important -- 21 MR. MORTON: Object to the side 22 bar. 23 Q. (BY MR. ROBERSON) If it's so</p>
<p style="text-align: right;">234</p> <p>1 A. They knew every time I went. 2 Q. To your knowledge, did they seek 3 any information about when you could return 4 to work or with what restrictions? 5 A. None whatsoever. 6 Q. Okay. Well, when he says there 7 wasn't any way for them to know, there was a 8 way, wasn't there? 9 MR. MORTON: Object to the form. 10 A. There was a way. They never 11 asked for any information about it. 12 Q. (BY MR. ROBERSON) They could 13 call your doctor, right? 14 A. Right. 15 Q. To your knowledge, they never 16 did, did they? 17 A. They never called -- 18 MR. MORTON: Object to the form. 19 A. -- anybody. 20 Q. (BY MR. ROBERSON) And this thing 21 about your deposition and leaving work 22 without telling them and all that stuff -- by 23 the way, the defendant in this case is Bonnie</p>	<p style="text-align: right;">236</p> <p>1 important, you'd think they would let 2 somebody know, wouldn't you? 3 A. I think Bonnie Plant Farm knew 4 where I was going to be today. 5 Q. Yeah. I think so, too. 6 MR. MORTON: Object to the side 7 bar. You don't get to make comments. Ask 8 questions. 9 MR. ROBERSON: I'm through. 10 11 FURTHER EXAMINATION BY MR. MORTON: 12 13 Q. You don't think, sir, that you, 14 as an employee of Bonnie Plant Farm, have a 15 responsibility to keep your direct supervisor 16 informed of where you are when you're 17 supposed to be working? 18 A. Yes, sir, he knows where I am, as 19 a general rule. 20 Q. But you didn't tell him this time 21 until two days after you'd left, correct? 22 A. Correct. 23 Q. And you don't know what he knows</p>

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<p>237</p> <p>1 about this litigation, do you?</p> <p>2 A. No, sir.</p> <p>3 MR. MORTON: All right. Thank</p> <p>4 you.</p> <p>5 MR. ROBERSON: Let's go.</p> <p>6 FURTHER DEPONENT SAITH NOT.</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>	
<p>238</p> <p>1 CERTIFICaTE</p> <p>2</p> <p>3 STATE OF ALABAMA)</p> <p>4 JEFFERSON COUNTY)</p> <p>5 I hereby certify that the above</p> <p>6 and foregoing deposition was taken down by me</p> <p>7 in stenotype, and the questions and answers</p> <p>8 thereto were transcribed by means of</p> <p>9 computer-aided transcription, and that the</p> <p>10 foregoing represents a true and correct</p> <p>11 transcript of the testimony given by said</p> <p>12 witness upon said hearing.</p> <p>13 I further certify that I am</p> <p>14 neither of counsel, nor of kin to the parties</p> <p>15 to the action, nor am I an anywise interested</p> <p>16 in the result of said cause.</p> <p>17</p> <p>18</p> <p>19 MICHELLE L. PARVIN</p> <p>20 Certified Court Reporter</p> <p>21 Licence Number 126</p> <p>22</p> <p>23</p>	

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**PLAINTIFF ARTHUR WATSON'S
EVIDENTIARY SUBMISSIONS
EXHIBIT 2**

In The Matter Of:

ARTHUR T. WATSON

v.

ALABAMA FARMERS COOPERATIVE, INC., ET AL.

NO. 2:07-CV-520-WHA

CHARLIE TRUSSELL

April 1, 2008



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IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CIVIL ACTION NO. 2:07-CV-520-WHA

ARTHUR T. WATSON,
Plaintiff,

vs.
ALABAMA FARMERS COOPERATIVE, INC.,
D/B/A BONNIE PLANT FARMS,
Defendants.

VIDEO DEPOSITION
OF
CHARLIE TRUSSELL
April 1, 2008

REPORTED BY: Eleanor S. Pickett
Certified Shorthand Reporter
and Notary Public

A P P E A R A N C E S

FOR THE PLAINTIFF:

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FOR THE DEFENDANT:

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Birmingham, Alabama 35203

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S T I P U L A T I O N

IT IS STIPULATED AND AGREED,
by and between the parties, through their
respective counsel, that the video
deposition of CHARLIE TRUSSELL may be
taken before Eleanor S. Pickett,
Commissioner, Certified Shorthand Reporter
and Notary Public;

That the signature to and
reading of the deposition by the witness
is waived, the deposition to have the same
force and effect as if full compliance had
been had with all laws and rules of Court
relating to the taking of depositions;

That it shall not be necessary
for any objections to be made by counsel
to any questions, except as to form or
leading questions, and that counsel for
the parties may make objections and assign
grounds at the time of trial, or at the
time said deposition is offered in
evidence, or prior thereto.

I, Eleanor S. Pickett, a
Certified Shorthand Reporter of
Birmingham, Alabama, and a Notary Public
for the State of Alabama at Large, acting
as Commissioner, certify that on this
date, as provided by the Federal Rules of
Civil Procedure of the United States
District Court, and the foregoing
stipulation of counsel, there came before
me at the law offices of Burr & Forman
LLP, 3400 Wachovia Tower, Birmingham,
Alabama, on April 1, 2007, commencing at
1:16 p.m. 1:15 p.m., CHARLIE TRUSSELL,
witness in the above cause, for oral
examination, whereupon the following
proceedings were had:

MR. ROBERSON: This is the
videotape deposition of Charlie Trussell.
Today is April 1st, 2008. We are at the
law offices of Burr & Forman at 420 North
20th Street, Birmingham, Alabama. My name
is Jerry Roberson. I'm the attorney for

1 (Pages 1 to 4)

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the plaintiff, Arthur T. Watson. This case is pending in the United States District Court for the Middle District of Alabama, Northern Division, styled Arthur Watson, plaintiff, versus Alabama Farmers Cooperative, Inc., doing business as Bonnie Plant Farms, defendant, CV2-07-520. I would ask all counsel of record to state their name and the party they represent.

MR. GERHARDT: Graham Gerhardt with Burr & Forman representing the defendant.

MR. TRUSSELL: Charlie Trussell.

MR. ROBERSON: All right. Our deponent. And if you would swear our witness, please, ma'am.

CHARLIE TRUSSELL, having been first duly sworn, was examined and testified as follows:

THE REPORTER: Usual

1 don't nod your head and don't say uh-huh
2 or huh-uh, which we do all the time in
3 normal conversation. Is that fair?

4 A. That's fair.

5 Q. And then I'm going to ask you
6 questions. If you don't understand what
7 I'm asking, please tell me and I'll try to
8 rephrase it. Okay?

9 A. Okay.

10 Q. If you answer it, I'm going to
11 have to assume that you understood what I
12 was asking. Okay?

13 A. Okay.

14 Q. All right. You understand
15 that you're under oath today, correct?

16 A. That's right.

17 Q. Just like you were in the
18 courtroom?

19 A. That's correct.

20 Q. Okay. Now, Charlie, how old
21 are you?

22 A. Sixty-six.

23 Q. Where do you work?

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1 stipulations?

2 MR. ROBERSON: Yes.

3 MR. GERHARDT: That will be
4 fine.

5
6 EXAMINATION BY MR. ROBERSON:

7 Q. Mr. Trussell, my name is Jerry
8 Roberson. I represent -- it's Terry
9 Watson, what he goes by. He's the
10 plaintiff in this case. Do you know
11 Terry?

12 A. Yes.

13 Q. How long have you been knowing
14 him?

15 A. Off and on, probably twenty
16 years.

17 Q. And have you ever given a
18 deposition before?

19 A. No, sir.

20 Q. Let me tell you today, I know
21 you have counsel here, but today I'm going
22 to be asking you some questions. And I
23 need you to answer out audibly, that is,

1 A. Bonnie Farms.

2 Q. And that's the company that
3 sells plants, correct?

4 A. That's correct.

5 Q. Do they sell anything besides
6 plants?

7 A. That's it.

8 Q. I mean, and by plants, I mean
9 they sell vegetables, correct?

10 A. That's correct.

11 Q. And they also sell shrubs or
12 flowering plants, correct?

13 A. That's correct.

14 Q. So if I go to Lowe's or Home
15 Depot and I pick out some plants, those
16 are probably from Bonnie Plant, correct?

17 A. More than likely.

18 Q. Okay. And those are just some
19 of your customers, correct?

20 A. That's correct.

21 Q. Now, how long have you been
22 working for Bonnie Plant?

23 A. Oh, about fifty years, all my

2 (Pages 5 to 8)

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life.

Q. Okay. Well, did you work for somebody else before and they were acquired by Bonnie Plant?

A. That's correct.

Q. Okay. Who did you work for before?

A. I worked with Bonnie and then I worked for Four Way Plant Farm which was owned by my family, and we merged with Bonnie about '90, '89, '90, something, I can't remember -- '97, excuse me.

Q. So you grew up in a family business?

A. Business, plant business all my life.

Q. Four Way Plant Farms?

A. Bonnie Plant Farm. I was originally with Bonnie.

Q. Okay.

A. And we withdrew from Bonnie and started our own business, and we merged back together and been there ever

Q. Okay. He's not the one --

A. That's his daddy.

Q. Okay.

A. Sam Waters, Glenn Paulk.

Q. I'm sorry, Glenn?

A. Glenn Paulk.

Q. Now, are all those people that you named, are they still -- are they with Bonnie?

A. No, they are all retired.

Q. Okay. Pete's retired?

A. Retired.

Q. And John Waters is retired?

A. Retired.

Q. And Sam and Glenn retired?

A. Retired.

Q. So you are the only one left?

A. I'm the only one left.

Q. Okay. Now --

A. Tim's left.

Q. Tim?

A. Yeah.

Q. Is that your brother?

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since.

Q. Where was Four Way located?

A. Union Springs, Alabama.

Q. All right. Down in Bullock County?

A. That's correct.

Q. And who started that business besides yourself? Did you have any partners or anybody in with you?

A. In?

Q. Four Way.

A. My brothers -- my brothers and my uncles.

Q. Tell me who those people, what their names, are if you would, your brothers.

A. Pete Trussell.

Q. Okay.

A. John Waters.

Q. Now, there is a John Waters who's a lawyer down there in Union Springs.

A. That's my first cousin.

A. Yeah, younger brother. He was with Four Way too.

Q. Okay. Where does Tim work?

A. Bonnie.

Q. I mean what city is he located in?

A. Union Springs.

Q. Okay. So he works in an office down there?

A. Uh-huh.

Q. Is that yes?

A. Yes, yes.

Q. I'll try to remind you.

A. Yes.

Q. And where do you work, sir, now, where are you located?

A. Donaldsonville, Louisiana.

Q. Sir, I don't know much about Louisiana. Can you tell me where that city is located?

A. It's on the West Bank halfway between Baton Rouge and New Orleans. West side of the river. They call it the West

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Bank down there.

Q. Okay. And how long have you been working for Bonnie down in Donaldsonville?

A. This is the third season.

Q. And this business, the plant business, is a seasonal business, correct?

A. That's correct.

Q. Now, the people that work, that sell for Bonnie work -- sometimes they work a spring season and sometimes they work a fall season, correct?

A. That's correct.

Q. Do you have year-round employment with Bonnie, or do you work seasonally too?

A. I work year-round.

Q. Okay. And what is your position with Bonnie?

A. Station manager for Donaldsonville.

Q. Mr. Trussell, can you explain what a station manager does?

Q. Do y'all have a greenhouse down there?

A. That's correct.

Q. Okay. And you just have -- it may be several greenhouses?

A. It is.

Q. Okay. And so what do you call the people who work in that greenhouse in the seeding and growing stage?

A. Greenhouse labor.

Q. Okay. And how many folks do y'all have that work down there, just average, a range of people?

A. Five.

Q. And do they just work a season too, that is, a growing season?

A. They just work during the growing season.

Q. And for Donaldsonville, the growing season I assume is like the -- is like the sales season in that it varies by your location?

A. That is correct.

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A. I oversee growing and seeding plants and manage the salesmen and the helpers of the routes.

Q. Okay. Now, is there a station in Donaldsonville?

A. That's correct.

Q. So does that mean you grow plants there?

A. That's correct.

Q. All right. And do you have some office staff that is at Donaldsonville or near there?

A. Yeah, my wife is the office manager there. We stay there.

Q. Okay. And when you say -- the plants have to be grown or put in containers to be sold, to grow and be sold, correct?

A. That's correct.

Q. And you -- you are in charge of the actual physical growing of the plants?

A. That's correct.

Q. So what is your growing season down in Donaldsonville normally?

A. From December to July.

Q. Okay.

A. And from August to November.

Q. And the August to November, would that be for the fall season?

A. That's correct.

Q. And the December to July would be the spring season?

A. Right on.

Q. Okay. Now, other than your greenhouse labor and your wife, are there any other employees for Bonnie that work out of Donaldsonville?

A. Four salesmen, four route helpers.

Q. So does that mean that you have four routes in Donaldsonville.

A. Four routes we run out of there.

Q. In terms of the geography, where do your routes run?

4 (Pages 13 to 16)

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Page 19

1 A. The Baton Rouge area, the New
2 Orleans area and the Lafayette area,
3 southwest Louisiana.

4 Q. Okay. Then are you part of
5 a -- if we go up, are you part of a
6 certain district or region for Bonnie
7 Plant?

8 A. Just --

9 Q. In other words, who do you
10 report to, Mr. Trussell?

11 A. I report to Dennis Thomas,
12 Bonnie Plant --

13 Q. Who is he?

14 A. He's the manager for Bonnie
15 Plant.

16 Q. Where is he? Is he in Union
17 Springs?

18 A. Union Springs.

19 Q. All right. But, in other
20 words, are there -- a lot of times
21 companies divide up geographically into
22 say the southern region or -- anything
23 like that?

1 to know the arrangement of how you work.
2 Are you paid a salary?

3 A. No. I'm paid by the number of
4 flats that I grow at that station.

5 Q. Okay. You're paid on how many
6 you grow?

7 A. How many we -- no, how many we
8 scan sell.

9 Q. Scan sell?

10 A. Sell, right.

11 Q. So these plants are sold on a
12 consignment basis?

13 A. That is correct.

14 Q. So you physically have to --
15 not you, but your sales staff has to stock
16 them into stores, correct?

17 A. That's correct.

18 Q. And when they stock them, do
19 they scan them, that is, they have some
20 kind of a label or a bar code and they're
21 scanned into the computer?

22 A. They have a bar code, and the
23 stores scan them.

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Page 20

1 A. Huh-uh.

2 Q. Do y'all have anything like
3 that?

4 A. No, sir, not that I know of.

5 Q. Okay. So you just manage your
6 four salesmen, four route helpers and your
7 five growers and your wife?

8 A. That's correct.

9 Q. That's all the folks that work
10 out of Donaldsonville?

11 A. That's correct.

12 Q. Okay. And then you take
13 instructions from Dennis Thomas or that's
14 who you report your sales results and
15 things to?

16 A. That's correct.

17 Q. And if you need something,
18 labor or -- you report to him?

19 A. I report to him, and he might
20 -- just report to him, and that's it.

21 Q. All right. And, Mr. Trussell,
22 I don't want to know specifically your
23 salary or anything like that. I just want

1 Q. Okay. And then if the plant
2 is not sold by the Lowe's or the Home
3 Depot or whatever, do they -- can they
4 turn it back in and get credit from you?

5 A. We just pick it up, being it's
6 on pay by scan. We only get paid for what
7 is scanned.

8 Q. What they sell out the door?

9 A. Right. That's correct.

10 Q. Okay. So it takes a period of
11 time after your season for y'all to, in
12 effect, settle up?

13 A. That is correct.

14 Q. Okay. Because, like we say,
15 it's a consignment basis, correct?

16 A. That's correct.

17 Q. Okay. Now, how much do you
18 get a flat? Is it so many cents a flat,
19 or how does that work?

20 A. So much a flat. We get paid
21 by the flat.

22 Q. And a flat is like those tray
23 of eight?

5 (Pages 17 to 20)

Page 21

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A. Right, tray of eight, tray of eight or a tray of seventeen or a tray of nineteen.

Q. Depending on the plant?

A. Depending on the number of plants in the tray.

Q. Okay. So like I bought some marigolds, do y'all sell those?

A. That's correct.

Q. And they come in a flat with eight plants?

A. With eight packs, nine -- eight oh nines, you have eight packs to the flat.

Q. Okay.

A. Eight packs to the flat. Or either it could be if they're individual plants, there can be seventeen, nineteen, ten or either eight individual plants.

Q. Okay. All right. Now, do you have four salesmen that work out of Donaldsonville?

A. That's correct.

years.

Q. All right. How about Ian Mills?

A. This is Ian's second year, Mike's first year.

Q. Now, when you say Ian Mills' second year, is that with the company --

A. No.

Q. -- or as a salesman there?

A. Second year in Louisiana.

Q. Okay. Where did he work before?

A. He worked out of Missouri, but his territory was in the Dakotas.

Q. All right. And what about Mike Jones?

A. He's new.

Q. He's new?

A. He's new.

Q. New hire?

A. New hire.

Q. How old is Mike Jones?

A. Forty-four, forty-five.

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Q. Who are those four salesmen right now?

A. Joey Vaughn.

Q. All right.

A. Jeff Parker.

Q. All right. Is that V-a-u-g-h-n?

A. V-a-u-g-h-n.

Q. Okay.

A. Jeff Parker.

Q. Okay.

A. Ian Mills, I-a-n, and Mike Jones.

Q. All right. Now, have those gentlemen all been working there the whole time you've been there?

A. No, sir.

Q. Okay.

A. Jeff Parker and Joey Vaughn are the only two.

Q. Okay. They have been there for three years?

A. They have been there for three

Q. Approximately his --

A. Between his middle forties, early fifties.

Q. Okay. Now, you've been with the company for over twenty years?

A. Right.

Q. Okay. Have you hired salesmen or do people come to you? Or how do you get salesmen?

MR. GERHARDT: Object to the form.

Q. You can answer. He's just objecting for the record. How do y'all hire salesmen?

A. Different ways. I can hire them or either they come from the home office. It varies.

Q. Okay. But, I mean, from time to time have people come to you and applied for a job and you've hired them?

A. I can hire them if I choose to do so.

Q. Okay.

6 (Pages 21 to 24)

Page 25

Page 27

A. But I have to go through the office once I hire.

Q. You have to get approval?

A. Approval, right.

Q. Sure.

A. Right.

Q. But, I mean -- and can you fire a salesmen?

A. Yes, I can.

Q. Okay. You don't have to -- do you have to get approval for that too?

A. No, sir, I don't have to get approval for that.

Q. All right. Well, how many salesmen would you say you've hired during your career at Bonnie Plant? Would it be a dozen or more?

A. Oh, about six or seven.

Q. Okay. Were any of them over age sixty when you hired them?

A. No, sir.

Q. Okay. Now, and how many salesmen -- where did you work before

1 form.

2 Q. You can answer.

3 A. It's the most physical work a
4 person can do. It's long hours and hard
5 work.

6 Q. Okay. I mean, salesmen for
7 Bonnie Plant, they earn their money. Is
8 that a fair statement?

9 A. That is good -- right, that's
10 correct.

11 Q. Okay. I mean, if you want
12 something easy, that ain't going to be for
13 you?

14 A. Right.

15 MR. GERHARDT: Object to the
16 form.

17 Q. Correct?

18 A. Correct.

19 Q. Now, I understood -- and the
20 reason I'm taking your deposition, Mr.
21 Trussell, is I was told by the attorneys
22 for Bonnie Plant that for a short period
23 of time, you supervised Terry Watson, that

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1 Donaldsonville?

2 A. Tupelo, Mississippi.

3 Q. Were you a station manager
4 there?

5 A. I was a station manager there.

6 Q. How long have you been a
7 station manager?

8 A. Seven -- it's eight years,
9 eight years.

10 Q. Okay. At one time did you
11 used to sell for them, I mean as a route
12 salesman?

13 A. Yes, I was a route salesmen.

14 Q. That's what Terry Watson does,
15 correct?

16 A. Right. Right.

17 Q. So you've done that job,
18 correct?

19 A. Correct.

20 Q. And is it a hard job in the
21 sense that there is a lot -- you got to
22 pay attention to your customer, correct?

23 MR. GERHARDT: Object to the

1 is, he reported to you.

2 A. That is correct.

3 Q. And do you know when that
4 period of time was?

5 A. He was there about two and a
6 half, maybe three weeks, February of 2006,
7 I think that's correct.

8 Q. February. I know it was in
9 the spring season of 2006?

10 A. February 2006, right.

11 Q. And do you know when he left
12 Donaldsonville?

13 A. He wasn't there but about two
14 and a half weeks, maybe three, I just
15 don't remember. He left before the first
16 of March, I'm pretty sure of that.

17 Q. Okay. Sir -- and I'm asking
18 because I'm not familiar with y'all's
19 documents or anything.

20 A. Okay.

21 Q. But are there any documents
22 that might help us with the dates, that
23 is, when they transfer from one location

7 (Pages 25 to 28)

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1 to another, does there have to be some
2 kind of document for that?
3 A. I didn't have any, but the
4 office in Union Springs probably would
5 have something.
6 Q. What would you call that? I
7 mean, how would I ask for that?
8 A. I don't know.
9 Q. Okay. Well, how was Terry
10 assigned to you, that is, who did it?
11 A. Joe Stewart called and asked
12 me and I told him send him down there,
13 we'd try to give him something to do.
14 Q. Okay. Do you remember your
15 conversation with Joe?
16 A. Yeah. Joe said we needed to
17 try to keep the boy on the payroll so he
18 would be able to have some insurance. And
19 I -- I thought it was mighty nice of Joe
20 to do that.
21 Q. Did he tell you where Terry
22 had been working?
23 A. No, did not know.

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1 Q. Okay. Do you know anybody in
2 Bells, Tennessee?
3 A. Yes.
4 Q. Do you know where that is?
5 A. I know where that is.
6 Q. Near Nashville.
7 A. It's north of Tupelo, about
8 sixty miles.
9 Q. Okay. Did you know that Terry
10 Watson had worked for the company for
11 twenty years?
12 A. Yeah, I knew Terry had worked
13 for the company. But how long, I didn't
14 know.
15 Q. In fact, would -- do y'all
16 have an annual sales meeting?
17 A. Yes.
18 Q. Where all the salesmen go and
19 station managers go, I assume?
20 A. That is correct.
21 Q. And so had you seen him from
22 time to time --
23 A. Yeah --

1 Q. -- at that sales --
2 A. -- at the meetings.
3 Q. Sure. And just -- Bonnie
4 Plant sells in all forty-eight states in
5 the continental U.S., correct?
6 A. That's correct.
7 Q. So they have salesmen in all
8 those states?
9 A. That's correct.
10 Q. And would y'all get together
11 all at once once a year?
12 A. Most of them do. Some are not
13 invited.
14 Q. Okay.
15 A. We can't room -- we can't put
16 them all in the hotel.
17 Q. Where do y'all meet? Do y'all
18 meet in Alabama?
19 A. Conference Center at Auburn.
20 Q. Is it always the meeting is
21 always at Auburn?
22 A. Used to be in Eufaula at Lake
23 Point.

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1 Q. At the golf course out there?
2 A. Yeah.
3 Q. Now --
4 A. We got so big, we had to move
5 to Auburn.
6 Q. And what kind of things do
7 y'all do at the sales meeting? Y'all put
8 on programs and training things?
9 A. No.
10 Q. What do y'all do?
11 A. Mostly nothing. Party.
12 Q. Just get liquored up?
13 A. Get liquored up.
14 Q. Well, did you know that in the
15 year 2005, in the spring season of 2005,
16 Terry Watson had sold three hundred
17 thousand dollars worth of plants?
18 A. I didn't know that.
19 Q. At age sixty-one, he'd sold
20 three hundred thousand. You didn't know
21 that?
22 A. I did not know that.
23 MR. GERHARDT: Object to the

8 (Pages 29 to 32)

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form.
Q. Do you have to hustle to do
that?
MR. GERHARDT: Object to the
form.
Q. You can answer.
A. He had to have some good
labor.
Q. I agree with that. Did he
have to work to do it?
MR. GERHARDT: Object to the
form.
Q. You can answer. He just
objects for the record. There is not
anybody here to rule on it.
A. He would have had to have a
lot of good help.
Q. Okay. Mr. Trussell, do you
know what I mean when I say retaliation?
Do you know what that means?
A. I think I do.
Q. What does that mean, sir?
A. I'm trying to think of a

1 A. Do what?
2 Q. Have you ever been trained
3 about age discrimination?
4 A. No.
5 Q. Do y'all have written
6 materials that are passed out at your
7 annual meetings about Bonnie Plant
8 policies regarding age discrimination?
9 A. We have some literature passed
10 out, but I probably don't read it.
11 Q. Okay. Well, did you know
12 that if somebody complains of age
13 discrimination, that that is what the law
14 considers to be a protected activity?
15 MR. GERHARDT: Object to the
16 form.
17 Q. You can answer. Did you know
18 that, sir?
19 A. I didn't know that.
20 Q. And did you know that the law
21 prohibits an employer from taking an
22 adverse action against a person because of
23 their complaint of age discrimination?

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1 definition. I can't think of one right at
2 the present time.
3 Q. Okay. Well, I tell you what,
4 I'll help you a little. Do you agree with
5 me that it's illegal to discriminate
6 against somebody because of their age?
7 MR. GERHARDT: Object to the
8 form.
9 Q. You can answer.
10 A. Well, I'm older than him and
11 hadn't discriminated against me.
12 Q. Do you agree that age
13 discrimination is illegal?
14 MR. GERHARDT: Object to the
15 form.
16 Q. You can answer.
17 A. I'm just older than Terry, and
18 I'm still there.
19 Q. Well, sir, have you had any
20 training about age discrimination?
21 MR. GERHARDT: Object to the
22 form.
23 Q. Sir?

1 Did you know that?
2 MR. GERHARDT: Object to the
3 form.
4 Q. You can answer.
5 A. Didn't know that.
6 Q. Did you know that before Terry
7 Watson was transferred to Donaldsonville,
8 that he made a written complaint of age
9 discrimination? Did you know that?
10 MR. GERHARDT: Object to the
11 form.
12 Q. You can answer.
13 A. No, sir.
14 Q. Has anybody ever told you
15 that Terry Watson complained of age
16 discrimination?
17 A. No, sir.
18 Q. Well, do you know why you're
19 giving a deposition today?
20 A. Why?
21 Q. Do you know? Has anybody told
22 you why you're giving a deposition?
23 MR. GERHARDT: Object to the

9 (Pages 33 to 36)

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form.

A. He's got a lawsuit, I assume.

Q. Well, what job was Mr. Watson assigned when he was in Donaldsonville?

A. A route helper.

Q. A route helper?

A. That is correct.

Q. Do those people work on a commission?

A. Those people work on a commission.

Q. As a route helper they get a commission?

A. No, no, I thought you said did the route men work on. No. He --

Q. Well, did Terry Watson receive any commissions for the time that he worked in Donaldsonville?

A. Not that I know of. He didn't receive anything.

Q. Well, he got paid, didn't he, a draw?

A. I assume he did. I never saw

Q. Who is that?

A. He's my stepson.

Q. So he married your daughter?

A. I married his momma.

Q. Oh, you married his momma?

A. Years ago.

Q. Okay. Was Pitt Lowman ever assigned to work with Terry Watson?

A. They rode around down there, and they didn't -- they didn't receive any pay out of my station. They were just down there. And he went with Pitts out there and found a couple of stores. To my knowledge, we're not working but two accounts that Pitts opened up while he was there, and they both left after about two or three weeks.

Q. Sir, is Pitts still working with Bonnie Plant?

A. I think Pitts is in New York.

Q. Is he with Bonnie Plant?

A. Yeah.

Q. What does he do?

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a check.

Q. Okay. You weren't aware of his compensation arrangement?

A. I wasn't aware. He had a -- I wasn't aware, you know. They had an agreement with him.

Q. Well, did they charge him against you?

A. No, they did not.

Q. Do you know who they charged him to?

A. I have no idea.

Q. Did he call on customers near Donaldsonville and try to open new stores?

A. He rode with the guys on the truck for about two or three trips. And as far as my knowledge, he didn't do anything to help anybody. Just rode with them there for about seven, eight, ten days. It was early in the season, and Terry didn't do much while he was there.

Q. Do you know Pitt Lowman?

A. Yes.

A. He's a salesman.

Q. And had Pitt ever worked as a salesman before being assigned to Donaldsonville?

A. No, he has not.

Q. Does he have a college degree?

A. No, he does not.

Q. How old is Pitt?

A. Oh, about thirty, thirty-one.

Q. Has he ever worked in sales before?

A. He worked for himself. He had a little trucking company.

Q. Well, do you know if Terry and Pitt called on businesses and tried to sell them plants while he was working at Donaldsonville?

MR. GERHARDT: Object to the form.

Q. You can answer.

A. I think they went out, and, like I said, I think we have two accounts that they opened up during the two weeks

10 (Pages 37 to 40)

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they was down there. They -- the business was already there. They were just out there riding around.

Q. Well, did they have to provide any kind of report or anything to you about where they went?

A. Nothing. Nothing.

Q. You didn't check on them?

A. I didn't check on them. They were just out there playing around.

Q. They were just riding around?

A. Riding around, burning up gas.

Q. Are you a good manager, Mr. Trussell?

MR. GERHARDT: Object to the form.

Q. You can answer. Do you consider yourself a pretty good manager?

A. I would think so.

Q. Well, did you not check on them because he was your stepson, or what reason?

A. They didn't have anything to

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do. They were riding around trying to open up a few new accounts, and it really wasn't anything -- I knew they both wasn't going to be there long because there wasn't anything down there for them to do.

Q. So basically this position was just a make work position?

A. Right, that's correct.

Q. That's really what it was?

A. Right, that's correct.

Q. It wasn't any future in that. It was just something for him to do for a short time, correct --

MR. GERHARDT: Object to the form.

Q. -- Terry Watson?

A. I assume -- I'm assuming that he was on the payroll, so they just found -- you know, wanted to send him somewhere because I didn't pay him anything.

Q. All right. And then what happened after two or three weeks,

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according to you, what happened to Terry?

A. They called and --

Q. "They" being who?

A. I think Joe Stewart called and said that they was going to send him to Jasper, Alabama. They had had some man to quit there, to the best of my recollection. I don't remember too --

Q. A route salesman in Jasper quit?

A. Jasper, right, and he was going up there to replace him.

Q. And Terry was going to take over that route?

A. Right, that's correct.

Q. Okay. And so did you tell Terry that he needed to get in touch with Joe and get on up to Jasper?

A. I don't remember if Joe called Terry or how it really worked. All I know, he left and went to Jasper. The details, I don't remember.

Q. During the short time that you

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managed Terry or he reported to you, did you have any criticism of his job performance?

A. No. He didn't have nothing to do and wasn't no really job performance that he was performing for me during the time he was there.

Q. You certainly didn't have any occasion to write him up in some kind of a disciplinary way?

A. No, I didn't.

Q. And you never orally reported to him that there was something that he wasn't doing that he should be doing; is that correct?

MR. GERHARDT: Object to the form.

A. That's correct.

Q. Okay. So basically he just called on some accounts while he worked there for you, and you don't feel like he garnered y'all a lot of business in the short time he was there?

11 (Pages 41 to 44)

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A. That's correct.

Q. And there wasn't anybody that replaced him in what he was doing?

A. No.

Q. Because this was a make work position?

MR. GERHARDT: Object to the form.

A. There you go.

Q. And your son-in-law, what did he do after Terry left?

A. He left about the same time, if I remember it, and he went on to New York.

Q. Okay. So --

A. And Terry went to Joe Watson's -- I mean not Joe Watson. Joey Pageant.

Q. And Mr. Pageant is a station manager over Jasper; is that correct?

A. At that time.

Q. Oh, he was at that time?

A. At the time.

station manager, all he is doing basically is growing and managing labor. My physical work is nothing like it was at one time. And a route salesman for Bonnie Plant Farm must be in excellent physical condition to be able to do the work.

Q. So if you had a -- I apologize for asking you this, but do you have any health problems, like high blood pressure or anything like that?

A. Nothing -- I have high blood pressure, but it doesn't affect my working ability.

Q. Okay. And do you take medication for it?

A. I take medication for it.

Q. Have you ever had any heart problem or anything like that?

A. No, sir.

Q. Good for you.

A. That's the reason I'm staying. As long as I'm healthy, I'm going to continue doing it.

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Q. Is he not with the company anymore?

A. He is a station manager in Senora, Kentucky now.

Q. Okay. Now, did you have anything else to do with Terry Watson?

A. No.

Q. I mean, have you seen him at the meetings since then?

A. I saw him one time at the meeting and just walked by and spoke to him like I would you.

Q. Sure. I hope he said something back. Did he?

A. He did. He did.

Q. Okay. And, Mr. Trussell, can you explain to me what you see to be the differences between working a route as a route salesman and the job of a station manager?

A. A route salesman has got to be able to do physical work, get in and out of a vehicle several times a day. A

Q. Okay. If a person -- let's say a person had heart problems, they could -- they could -- what you're describing is they could do the job of -- it would be easier for them to do the job of a station manager than it would be to do the more physical labor of a route salesman; is that correct?

A. Yes, if they have the ability to grow and fertilize and spray plants. A lot about running a station everybody can't do it.

Q. Obviously they have to be able to grow plants, correct?

A. Right.

Q. And they have to be able to manage employees, correct?

A. Right.

Q. Now, do you get paid more or less if your salesmen -- the salesmen have a commission, correct?

A. That's correct.

Q. And their commission, if they

12 (Pages 45 to 48)

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reach a certain goal or sales level, they get more commission, correct?

A. That's correct.

Q. And I think, from what I've seen, that at like three hundred and seventy-five thousand dollars, the commission changes?

A. That's correct.

Q. Do you know what it is, what percentage it is?

A. No. Because I'm not running a route now and, you know, I hadn't -- I get paid by the flat.

Q. Okay. Well, what I'm trying to ask you is -- see if I'm understanding this right, and I'm just going to throw out these figures.

A. Okay.

Q. Up to three hundred and seventy-five thousand dollars, if you don't get there, let's say you get ten percent commission, okay?

A. Okay.

meet that sales goal?

A. That's correct.

Q. Is that a fair statement?

A. That's fair.

Q. And the commissions that you pay them, they have certain expenses that have to come out of those commissions, correct?

A. That's correct.

Q. So that Bonnie Plant can manage their cost, correct?

A. Correct.

MR. GERHARDT: Object to the form.

Q. They're making a percentage on every flat they sell, right? That's the hope anyway?

A. Yeah.

Q. Correct?

A. That's correct.

Q. So the salesman is bearing the risk of his route for sales? He has to pay his helper out of his commissions,

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Q. But if you get -- if you meet your goal of three hundred seventy-five thousand, let's say you get fourteen percent commission. Does that make sense you have?

A. You have an increase according to where you are at. I don't know what it is. But the more you sell, the more -- certain stations.

Q. Okay. So a salesmen that meets his commission is going to get paid more for all the sales. It's not fourteen percent over three seventy-five, it's fourteen percent of the three seventy-five?

A. That's correct.

Q. But if you don't meet your goal, you're going to get less commission, right?

A. That's correct. That's correct.

Q. So it's important in terms of compensation to the salesmen that they

correct?

MR. GERHARDT: Object to the form.

Q. Correct?

A. Correct.

Q. And he has certain costs that are deducted from his route? For example, y'all have some kind of charge-back for fines. Do you know what I'm talking about?

A. Yes, there is certain fines.

Q. What is a fine for a salesman? What does that mean?

A. If he doesn't do his logbook properly, doesn't turn his tickets in. It's different things.

Q. They got a financial incentive to do what you ask?

A. Right.

Q. In fact, if they don't go to their -- y'all have chain stores like Lowe's and Home Depot, correct, on your routes?

13 (Pages 49 to 52)

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A. That's correct.

Q. If they don't go to those
every so often, they can be fined,
correct?

A. Right.

Q. How often do they have to show
up at the chain stores?

A. We have changed that this
year. Doesn't have a skip program.
That's what they call a skip program. We
doesn't have it anymore. It was in effect
until this year.

Q. Do you know in previous years
how often they had to show up?

A. Twice a week. Every four
days.

Q. And, sir, at Bonnie Plant,
y'all have got GPS devices in the trucks,
correct?

A. That's correct.

Q. You know when the truck is
running and when it's moving, correct?

A. That's correct.

A. Right.

Q. -- driver's license?

A. Legal driver's license and a
medical card.

Q. Okay. So --

A. And pass the drug test.

Q. So between the helper and the
salesmen, they can -- can they work around
the clock then?

A. About twenty, twenty-one
hours.

Q. Okay.

A. But they will have enough time
off, the other three or four doesn't
matter. They will work -- in other words,
the other three or four, they will be off
enough that that doesn't matter.

Q. Have you ever fired anybody
for a logbook violation?

A. No, sir.

Q. Have you ever disciplined
anybody for working too many hours?

A. No, sir, because I hadn't had

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Q. You know how many hours a day
the salesman is working, correct?

A. That's correct.

Q. Now, you don't have to have a
CDL to drive this truck, right?

A. Nope.

Q. But do you have certain legal
requirements about when -- what hours you
can operate it?

A. Yes, you do.

Q. What do y'all call that?

A. Well, you got a logbook. You
can only work so many hours a week.

Q. A log law or something that
you --

A. Yeah.

Q. Now, can the helper drive the
truck?

A. If he's legal. If he has
the --

Q. If he has the --

A. -- paperwork that's necessary.

Q. If he has a health card and --

to.

Q. Do you get reports that are
printed out about the trucks and how many
hours they are operating?

A. I know how many hours they are
operating. I have the logbook that I look
at before I send it to Union Springs.

Q. You have what the driver
reports?

A. Right.

Q. I'm asking you about
information that may be different from
what the driver reports, that is, the
actual GPS log.

A. I don't have that.

Q. Who has it?

A. It's in Union Springs.

Q. Oh, okay. Well, why don't
they make that available to you?

A. I don't guess they feel it's
necessary.

Q. Okay. Now, is commission
important, an important element of your

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compensation to a route salesmen?

MR. GERHARDT: Object to the form.

Q. You can answer.

A. It's the only way he gets paid is on commission.

Q. He gets a draw against his commission, correct?

A. That's correct.

Q. Because there's -- it takes some time to settle up. Y'all pay him a draw during the season, right?

A. That's correct.

Q. And if his commission doesn't exceed his draw, he can owe y'all money, can't he?

A. That is correct, yeah.

Q. That ain't a good thing, is it?

A. Nope.

Q. That's like working for the company store there, isn't it?

A. Yeah.

that, more distance between towns.

Q. Okay. It's basically a matter of the concentration of the stores; is that right?

A. That's correct.

Q. I mean, in New Orleans, for example, you might have ten or twelve stores within twenty miles?

A. That's correct.

Q. But in Louisiana, other parts of Louisiana, you might have to drive fifty miles between stores, right, or Texas or somewhere like that?

A. Louisiana about twenty, twenty-five.

Q. Okay. Well, and part of your job as a station manager is to try to even up the routes, correct?

A. That's right.

Q. I mean, you want -- you know, Home Depot and Lowe's and people are opening stores all the time, you want each salesman to have an opportunity to sell,

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MR. GERHARDT: Object to the form.

Q. You work all season and you owe money at the end of the season, right?

MR. GERHARDT: Object to the form.

Q. You can answer.

A. That's correct.

Q. Now, do you know what I'm talking about when I say a long route versus a short route?

A. Yes, I do.

Q. Okay. What does that mean for the people on the jury? What is the difference between a long route and a short route?

A. Some of them consist of more mileage than others.

Q. There is a longer distance between the stores?

A. Right. In the North and Midwest, you have go longer routes because Montana and Iowa and Ohio and places like

correct?

A. That's correct.

Q. And you want them to have -- well, you wouldn't want to have a salesman with twenty-five stores and another salesman with ten, right?

A. That's correct.

Q. You try to get that number closer together, correct?

A. Try to get the money balancing.

Q. That's right. That's right. And so every year, do y'all -- is that one of the things y'all do at the sales meeting or some other location is y'all try to balance up the routes, even up the routes?

A. That's up to each station manager.

Q. Okay. That's just something you do on your own?

A. Right.

Q. Okay. Charlie, do y'all

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have -- some sales organizations, they have promotions or contests or things like that. Do y'all have anything like that?

A. No, sir.

Q. Okay. I mean, you know what I'm talking about, though, right, where somebody can win a trip if they sell so much or something like that?

A. No.

Q. Y'all don't have any awards or anything for salesmen?

A. Nothing. Work. It's a unique business.

Q. Charlie, you live in Louisiana, I'm in Birmingham. I'm not going to have a chance to talk to you again. Is there anything good or bad that you can say about Terry Watson, my client --

MR. GERHARDT: Object to the form.

Q. -- as an employee?

A. Nothing good or bad. Nothing.

can't be punished for any testimony you give today?

MR. GERHARDT: Object to the form, Jerry. And, again, I can't believe you are asking these questions.

A. (No response.)

Q. Sir?

A. That's correct.

Q. Okay. Mr. Trussell, have you ever got a speeding ticket?

A. Several times.

Q. You know what happens when you break the law, you can be punished, right? You can be fined or have some punishment, correct?

A. That's correct.

Q. Do you think that people, employers that discriminate based on age, which is an illegal activity, do you think they should be punished?

MR. GERHARDT: Object to the form.

Q. You can answer.

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I don't have nothing to say --

Q. Okay.

A. -- one way or the other.

Q. Now, I will tell you this, that I've asked for your deposition, and they produced you. And the same law that protects Terry Watson protects you, that is, they can't punish you or take any action against you because you participated in this proceeding, in this hearing. That is, they can't take action against you because you give testimony that they don't like. Do you understand that?

A. I understand.

MR. GERHARDT: Jerry, I object. I can't believe you are even insinuating that either.

MR. ROBERSON: I didn't insinuate anything. Since y'all hadn't bothered to train him, I thought I might ought to.

Q. But do you understand that you

A. They're not discriminating because I'm older than Terry.

Q. You are older than Terry.

A. I'm still working.

Q. You are still working. He's still working. He's still working. For a lot less than he was working for.

MR. GERHARDT: Object to the form, if that's a question.

Q. Do you understand that?

MR. GERHARDT: Object to the form.

Q. Do you understand Terry's compensation has changed since he made his complaint of age discrimination?

MR. GERHARDT: Object to the form.

Q. Are you aware of that? Sir?

A. No.

MR. GERHARDT: He's testified he's not aware of his compensation since he left, I believe.

Q. Can I get an answer to my

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question? Do you know about his compensation?

A. I have no -- don't know anything about it.

Q. Okay. Well, do you know any reason why a route salesman is transferred when he's doing a satisfactory job?

MR. GERHARDT: Objection.

Q. Do you know why his route is reassigned when he's doing a satisfactory job?

MR. GERHARDT: Object to the form.

Q. You can answer.

A. It happens all the time.

Q. Why does it happen?

A. Just they might need somebody in some other area. You know, it's no reason. It's just happens.

Q. Well, you have got to take him off that route to put him somewhere else, don't you?

A. That's correct.

Q. But you didn't take a salesman that was doing a good job and send him to another territory?

A. I took money away from some that was doing a good job.

Q. You did take money away. But you didn't transfer him involuntarily, did you?

MR. GERHARDT: Object to the form.

Q. You can answer.

MR. GERHARDT: I don't even know who we are talking about getting -- who is this person we're talking about? Who is the "him"?

MR. ROBERSON: Terry Watson.

MR. GERHARDT: I didn't know if you were asking about Mr. Watson because you have been going back and forth about generalities, and sometimes I guess trying to imply that this may have to do with Mr. Watson.

MR. ROBERSON: No, I'm asking

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Q. Why would you do that?

MR. GERHARDT: Object to the form.

A. I don't know.

Q. I don't either. Have you ever done that, taken a route salesman that was doing a satisfactory job and send him somewhere else?

A. Yes.

Q. Why? Why did you do it?

A. For expansion purposes. I divided my routes up this year, went from three to four. Took money away from all three of them to have a fourth route. And it will continue to expand. It does every year. Didn't really take anything. They will have more time to do a better job.

Q. But, I understand what you're saying.

A. Uh-huh.

Q. You had three routes, now you have four?

A. There are four.

him if he has ever transferred a route salesman who was meeting his sales goals to another route.

Q. And his answer is?

A. It has -- it has been done.

Q. Have you ever done it, Mr. Trussell?

A. No, I haven't. Haven't had to yet.

Q. Thank you. And you don't know any reason why it would be done, correct?

MR. GERHARDT: Object to the form.

Q. Sir? You don't know any reason why you would transfer somebody that was doing a satisfactory job to another territory, do you?

MR. GERHARDT: That's been asked and answered. And one of the reasons -- I know one reason he gave was for expansion purposes. That's one of the reasons.

MR. ROBERSON: He tried to give

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it, but we have eliminated that because he said that's what he did on his route, but he didn't transfer anybody. He created an additional route, but he didn't transfer anybody, correct?

A. That's correct.

Q. And you hadn't and you don't know why anyone would be transferred under those circumstances, correct?

MR. GERHARDT: Object to the form.

Q. You can answer.

A. I don't really know.

MR. ROBERSON: Okay. Thank you, Mr. Trussell. I don't have any further questions. Do you have any? I'm at fifty-three minutes. I need to change tapes if you are going to have some questions.

MR. GERHARDT: I might have a few if you want to stop now and take a quick break.

MR. ROBERSON: Okay. Let's

is we'll have the projected sales. That's the number one thing. What each man thinks he can do, we'll have him put it down on a piece of paper. And as a station manager, I go over it and look at it and we try to have an increase every year. In my fifty years of business, I've never had a decrease.

MR. GERHARDT: Thank you. Jerry, that's all I've got.

MR. ROBERSON: I didn't have to change tapes for that. I don't have anything else. Thank you, Mr. Trussell. I appreciate your help today.

FURTHER THE DEPONENT SAITH NOT

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just go off the record and let me change tapes. We'll go off the record at 2:10.

(Whereupon, a break was had from 2:10 p.m. until 2:15 p.m.)

MR. ROBERSON: All right.

We'll start tape two of the videotape deposition of Charlie Trussell at 2:15.

EXAMINATION BY MR. GERHARDT:

Q. This will be very short. Mr. Trussell, I know you testified a little bit earlier, and I think you were joking, but just to make sure, just to clear that up, will you tell me what it is that you all do at the annual sales meeting?

A. We go over the projected sales for the upcoming year to see what our increases can be. We'll go over different -- I'm trying to think of -- like trucks and logbooks and all this, we have changes in that, and we'll meet and have a little meeting on it. And the biggest, biggest thing about it, though,

CERTIFICATE

STATE OF ALABAMA)
JEFFERSON COUNTY)

I hereby certify that the above and foregoing deposition was taken down by me in stenotypy, and the questions and answers thereto were reduced to typewriting under my supervision, and that the foregoing represents a true and correct transcript of the deposition given by said witness upon said hearing.

I further certify that I am neither of counsel nor of kin to the parties to the action, nor am I in anywise interested in the result of said cause.

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**PLAINTIFF ARTHUR WATSON'S
EVIDENTIARY SUBMISSIONS
EXHIBIT 3**

In The Matter Of:

ARTHUR T. WATSON

v.

ALABAMA FARMERS COOPERATIVE, INC., ET AL.

NO. 2:07-CV-520-WHA

LES BRANHAM

April 9, 2008



TYLER EATON

TYLER EATON MORGAN NICHOLS & PRITCHETT INC.

THE HIGHEST QUALITY IN COURT REPORTING

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ARTHUR T. WATSON
ALABAMA FARMERS COOPERATIVE, INC., ET AL.

LES BRANHAM
April 9, 2008

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IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CIVIL ACTION NO. 2:07-CV-520-WHA

ARTHUR T. WATSON,
Plaintiff,

vs.

ALABAMA FARMERS COOPERATIVE, INC.,
D/B/A BONNIE PLANT FARMS,
Defendants.

VIDEO DEPOSITION
OF
LES BRANHAM
April 9, 2008

REPORTED BY: Eleanor S. Pickett
Certified Shorthand Reporter
and Notary Public

A P P E A R A N C E S

FOR THE PLAINTIFF:

Mr. Jerry D. Roberson
Attorney at Law
Roberson & Roberson
P.O. Box 380487
Birmingham, Alabama 35238

FOR THE DEFENDANT:

Mr. Graham Gerhardt
Attorney at Law
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Birmingham, Alabama 35203

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S T I P U L A T I O N

IT IS STIPULATED AND AGREED,
by and between the parties, through their
respective counsel, that the video
deposition of LES BRANHAM may be taken
before Eleanor S. Pickett, Commissioner,
Certified Shorthand Reporter and Notary
Public;

That the signature to and
reading of the deposition by the witness
is waived, the deposition to have the same
force and effect as if full compliance had
been had with all laws and rules of Court
relating to the taking of depositions;

That it shall not be necessary
for any objections to be made by counsel
to any questions, except as to form or
leading questions, and that counsel for
the parties may make objections and assign
grounds at the time of trial, or at the
time said deposition is offered in
evidence, or prior thereto.

I, Eleanor S. Pickett, a
Certified Shorthand Reporter of
Birmingham, Alabama, and a Notary Public
for the State of Alabama at Large, acting
as Commissioner, certify that on this
date, as provided by the Federal Rules of
Civil Procedure of the United States
District Court, and the foregoing
stipulation of counsel, there came before
me at the law offices of Burr & Forman
LLP, 3400 Wachovia Tower, Birmingham,
Alabama, on April 9, 2007, commencing at
11:36 a.m., LES BRANHAM, witness in the
above cause, for oral examination,
whereupon the following proceedings were
had:

MR. ROBERSON: All right.
This is the videotape deposition of Les
Branham. It's being taken at the offices
of Burr & Forman on April 9th, 2008. It
is presently 1:15 p.m. It's being taken
in the case of Arthur T. Watson, Terry

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Watson, versus Alabama Farmers
Cooperative, Inc., doing business as
Bonnie Plant Farms, defendant, CV 07-520.
My name is Jerry Roberson. I'm the
attorney for the plaintiff. I'm also
running the video camera. And I would ask
all counsel of record to state their name
and the party they represent.

MR. GERHARDT: My name is
Graham Gerhardt, I'm with Burr & Forman,
here on behalf of the defendant.

MR. ROBERSON: Would you swear
our witness, please, ma'am.

LES BRANHAM,
having been first duly sworn, was examined
and testified as follows:

THE REPORTER: Usual
stipulations?

MR. GERHARDT: Yes, ma'am.

MR. ROBERSON: Yes.

asking you, okay?

A. Yeah.

Q. Les, what is your date of
birth?

A. 7/28/76.

Q. So does that make you how old?

A. Thirty-one.

Q. Thirty-one. And how long have
you worked at Bonnie Plant Farms?

A. This will be my fifth year.

Q. All that time have you been a
salesman?

A. Yes, sir.

Q. Okay. You're working now in
Bells, Tennessee?

A. Yes, sir.

Q. Did you start, begin your
career there with Bonnie Plant?

A. Yes, sir.

Q. Had you worked at any other
location than Bells, Tennessee?

A. I went to Arizona for three
weeks prior to being sent to Bells,

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EXAMINATION BY MR. ROBERSON:

Q. Mr. Branham, my name is Jerry
Roberson. I introduced myself before the
deposition. Have you ever given a
deposition before?

A. No, I have not.

Q. Let me tell you a couple rules
that we have today. I'm going to be
asking you questions. I need you to
answer my questions truthfully, but also
audibly, that is, don't shake or nod your
head or don't say uh-huh or huh-uh, okay?

A. Okay.

Q. And if I ask you a question
that you don't understand, please tell me
that.

A. Okay.

Q. And I'll try to rephrase it or
ask it a way that you do understand it.
Fair enough?

A. Yes.

Q. Because if you answer it, I
have to assume that you knew what I was

Tennessee.

Q. Okay. What year was that,
sir?

A. 2004.

Q. Now, did you know the
gentleman I just talked to, LES BRANHAM,
before you went to work for him?

A. No.

Q. Never met him?

A. No.

Q. How did you get hired with
Bonnie Plant? I mean, did you apply for a
job?

A. Yes.

Q. Respond to an ad or something?

A. I have an uncle that worked
for Bonnie Plant Farms, and he referred me
to the company.

Q. Who is your uncle?

A. Michael Caddell.

Q. Where does he work?

A. In Alabama.

Q. Do you know where?

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1 A. Out of Union Springs.
2 Q. Okay. Is he in part of the
3 management team?
4 A. No.
5 Q. Is he a salesman?
6 A. Salesman, yes.
7 Q. Okay. He just reports to work
8 down in Union Springs?
9 A. Yes.
10 Q. Okay. How long has he worked
11 for the company?
12 A. Roughly thirty years.
13 Q. Just can't keep a job; is that
14 right?
15 A. That's right.
16 Q. All right. So he thought it
17 would be a good opportunity for you?
18 A. Yes.
19 Q. That's correct?
20 MR. GERHARDT: Objection.
21 Q. Tell me about the extent of
22 your education. How far did you go in
23 school?

1 Q. Is that right?
2 A. Uh-huh.
3 Q. Is that yes?
4 A. Yes.
5 Q. I'll try to remind you.
6 A. Sorry about that.
7 Q. That's right. I'm not doing
8 it to annoy you. I'm just trying to make
9 a record.
10 A. I understand.
11 MR. GERHARDT: And crunching
12 the ice might not be the best idea either.
13 A. Okay.
14 Q. All right. Where did you work
15 for a landscape company?
16 A. In Augusta, Georgia.
17 Q. Are you married?
18 A. No.
19 Q. Now, you presently work in
20 Bells, Tennessee, correct?
21 A. Yes.
22 Q. Began working there in 2004?
23 A. Yes.

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1 A. High school diploma.
2 Q. Okay. Have you had any
3 college?
4 A. No, sir.
5 Q. Have you had any prior sales
6 experience, that is, before you went to
7 work with Bonnie?
8 A. No.
9 Q. Did you have any previous
10 employment before you went to work? Did
11 you hold a full-time job?
12 A. Yes, sir.
13 Q. Where did you work?
14 A. I worked for a lawn care
15 company.
16 Q. What were you doing,
17 landscaping?
18 A. Yes.
19 Q. That's hard work, isn't it?
20 A. Yeah, can be.
21 Q. Okay. So cutting grass and
22 trimming and that kind of stuff?
23 A. Uh-huh.

1 Q. Was that the spring of 2004?
2 A. Yes, spring 2004.
3 Q. How do you know -- this is a
4 seasonal business, correct?
5 A. Uh-huh, yeah.
6 Q. How do you know when to come
7 to work? Do they send you a letter or do
8 they call you, what -- how do you know?
9 A. Usually have a date to be in
10 Bells.
11 Q. Report date?
12 A. Yes.
13 Q. How do they get that word to
14 you?
15 A. By telephone.
16 Q. They just call and say this is
17 your report date?
18 A. Yes.
19 Q. Okay. Is that normally Adam
20 that calls?
21 A. Yes.
22 Q. Okay. And then do you know
23 when the season ends, the spring season in

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Bells?

A. Yes.

Q. When is that?

A. Usually around the end of June. This year it will be around July 10th, 11th, somewhere around there.

Q. Okay. And it varies by where you're located in the country, that is, your season, planting season varies?

A. Usually most of us end on the same date. Now beginning, we all begin on a different date.

Q. Yeah. The further south the earlier you begin?

A. Yes.

Q. And the further north the later you begin?

A. Yes.

Q. Okay. Do you work in the fall season?

A. No.

Q. Does Bells have a fall season?

A. No.

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Q. Okay. And that varies too by location?

A. Right.

Q. Correct?

A. Yes.

Q. So people that -- anyone that doesn't want to work the fall season, Bells would be a good place to work, correct? I mean, they just have a spring season, right?

A. Yes.

Q. You've worked for Adam for four years?

A. Yes.

Q. This will be your fourth year?

A. That will be my fifth year.

Q. Fifth year. You're wearing a Bonnie shirt. Is that required, or is that just something that's available to you if you want it?

A. It's available. We are -- we are asked to wear Bonnie logos in the stores to represent our company, yes.

Q. So the staff will know you're a Bonnie salesman, that type thing?

A. Yes, yes.

Q. And you're on route eighteen oh three?

A. Yes.

Q. Before you were assigned that route, what route did you work?

A. Route in Illinois, eighteen oh five.

Q. And do you -- you get a settlement sheet each year for commission purposes, correct?

A. Yes.

Q. As a salesman for Bonnie Plant, you're paid a draw against your commission, correct?

A. Yes.

Q. They don't settle up with you for the year until actually the next calendar year, correct?

A. They will settle up with us at the end of the season.

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Q. Oh, they will?

A. Yes.

Q. Okay. So let's say for 2008, sometime after July but before December 31st, you'll know what your commissions are?

A. Yes.

Q. And then that will be offset by what you've drawn to date?

A. Yes.

Q. Now, a lot of folks -- if we have a jury trial, probably nobody is going to be a former Bonnie Plant salesman, so I'm just trying to explain how y'all get paid, okay?

A. Okay.

Q. Y'all get a draw. Is it biweekly or weekly?

A. Biweekly.

Q. Okay. And that's a certain amount?

A. Yes.

Q. How much is your draw?

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A. It is fifteen hundred dollars.

Q. Every two weeks?

A. Yes.

Q. Okay. And then you get paid a commission which actually can vary year to year, right?

A. Well, all of our pay is commission.

Q. Okay.

A. It just varies year to year whether your commission is over your draw or under your draw.

Q. Okay. I'm doing a poor job of explaining this. But your compensation is based on the sales volume for your route; is that fair?

A. Your sales collected, yes, sir.

Q. Collected sales for the year.

A. Yes, sir.

Q. Okay. And the percentage of your sales that are collected, you receive as a commission, right, a percentage of

Q. Twenty-six biweekly checks?

A. Yes, sir, yes, sir.

Q. Okay. So they never -- do they lay you off?

A. Yes.

Q. So you get that on top of your draw check?

A. Get what on top of my draw check?

Q. Your unemployment check.

A. Yes.

Q. Okay. Okay. I'm with you now. So when you're not working, when the season is over, in addition to your draw check, you can get unemployment?

A. Yes.

Q. Okay. Now, and when the -- when does your unemployment start? Does it normally start in August or July?

A. No. About a month after I have my date of release.

Q. Okay. So they actually say that you're released on a certain day?

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that amount?

A. It can be, yes.

Q. Okay.

A. You have an option to defer. If you make over your -- if your commission winds up being over what your draw is, you have the choice of getting a one-time settlement check or you can defer it to the rest of your draw checks.

Q. Okay. So do you get a draw for the entire year?

A. Yes.

Q. They don't lay you off and let you draw unemployment any part of the year?

A. They do lay us off of work, yes.

Q. Okay. Like in August, do you get a draw check or an unemployment check?

A. I get a draw check.

Q. Until when?

A. I get it year-round, twenty-six weeks a year.

They report that to unemployment?

A. Yes, sir.

Q. And then after your time runs, you can draw unemployment after that date?

A. Yes.

Q. Okay. I'm with you now. Now, when you worked the other route in Illinois, before you got to eighteen oh three, when you worked eighteen oh five, did you have a year-round draw?

A. Yes.

Q. Was it also fifteen hundred dollars?

A. First two years it was a thousand dollars. Then the third year I moved it to fifteen hundred.

Q. Okay. So when you worked in Illinois, your draw check was a thousand dollars biweekly or five hundred dollars a week, correct?

A. Yes.

Q. When you changed in 2006 to eighteen oh three, you increased your draw

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to fifteen hundred dollars biweekly?

A. No matter if I would have changed routes, I would have increased my draw.

Q. Okay. But that's how it occurred, correct?

A. Yes.

Q. Okay. And then that's currently what you're receiving, correct?

A. Yes.

Q. Now, can you tell me how many stores you had on your route in 2006 on eighteen oh three?

A. Roughly thirty-five.

Q. Thirty-five. Do you know if they made any changes from -- on that route from the previous year?

A. Yes.

Q. Did they add any stores?

A. Well, they added some and they took some away.

Q. Okay. What stores did they add, if you know?

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A. They added a Home Depot.

Q. Where is that?

A. In Memphis, in Cordova, Tennessee.

Q. Okay. What else did they add?

A. Wal-Mart.

Q. Where is that one?

A. In Memphis, Germantown Parkway.

Q. Okay. Anything else they added?

A. Nope.

Q. Do you know what they took away?

A. There was a -- there was I believe it was three or four stores in Selmer, Tennessee.

Q. Selmer?

A. Selmer.

Q. And do you know what kind of stores they were? Were they independents or chains?

A. Chains and independents.

Q. Okay. Can you name any of them?

A. Wal-Mart, Tennessee Farmers Co-op. And I don't know the name -- I think it was some other stores, independent stores that I'm not familiar with the name.

Q. Where is Selmer in reference to Germantown, I mean how far is that?

A. Maybe -- I really don't know, forty-five minutes, an hour.

Q. Is it like about forty miles or so or -- I don't know anything about Tennessee.

A. I'm not sure how, I've never driven from Germantown Parkway to Selmer or Germantown to Selmer, so I really don't know.

Q. Well, did this change have the effect of making the route be shorter geographically?

A. Yes.

Q. Okay. And did it also have

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the effect of being higher volume?

A. No.

Q. No. Roughly offset?

A. Yes.

Q. That's your understanding?

A. Uh-huh.

Q. Is that yes?

A. Yes.

Q. Okay. Now, were there any changes in 2007?

A. No.

Q. All right.

A. Actually there was. I did lose a couple stores in 2007.

Q. What did you lose in 2007?

A. I lost two stores in Henderson, Tennessee and one in Middleton, Tennessee, so it was actually three stores.

Q. Okay. Did somebody else get them?

A. Yes.

Q. Who got them, what route, do

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you know?

A. It was what we called a Mississippi route. He runs a little bit of Tennessee and a little bit of Mississippi.

Q. He just inches into Tennessee there and catches something?

A. Right. That territory was added to Bells, Tennessee. Mississippi territory was added to Bells, Tennessee in 2006.

Q. Okay.

A. And that's why the routes were redone the way they were.

Q. Now, what about this year, 2008, have you added any stores?

A. Yes, we've changed them. We've taken some away and added some more.

Q. What did you add?

A. Another Home Depot in Memphis area and another Wal-Mart.

Q. Now, when y'all add a store, is that because Home Depot has opened a

A. Yes.

Q. Have you since you've been assigned to this route opened any stores?

A. Yes, sir.

Q. You know what I'm talking about --

A. Yes.

Q. -- when I say that?

A. Yes, I have.

Q. What stores have you opened, that is, obtained their business?

A. I've opened a store by the name of Naturescapes in Whiteville, Tennessee.

Q. Okay. Is that an independent?

A. Yes.

Q. Is that a nursery or what do they --

A. Yeah, I would basically call it a nursery, yes.

Q. Okay. Anything else?

A. No.

Q. Okay. Now --

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new location, or is that because you've just rearranged your route?

A. A lot of times as far as I know, it's because I guess the territory. I mean, it will be easier to run one way than the other. The territory I'd lose most of the time is on somebody's else's way to their stores or vice versa. Or the ones I gain are really close to me.

Q. It seems like they're making your route more efficient, is that -- when they add stores, it's to make your route more efficient; is that correct?

A. Yes.

Q. And when you lose stores, it's because you're not losing a customer, they're reassigning them to another route?

A. Yes.

Q. Is that a fair statement?

A. Yes.

Q. Now, are you supposed to try to develop business, that is, call on stores that you don't currently service?

A. Well, and I have reopened one store in Germantown, Germantown Hardware, which was worked in past years which I guess had not been worked three or four years prior to me being on that route again.

Q. Okay. Now, you were working for Adam and -- in 2000 -- you worked in 2005 in Illinois, correct?

A. Yes.

Q. When did he approach you about changing routes, when in time did he approach you of that?

A. I was offered a Tennessee route in December of 2005.

Q. Did he have any conversation with you when he offered you that route?

A. He just said that he had an opening and was just -- was curious if I was interested.

Q. Okay. Did he tell you anything else about who had the route or why they weren't coming back?

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A. No.

Q. Did you know? I mean you worked with Terry?

A. Yes. I knew Terry had just worked that route.

Q. Okay. What was your understanding about why Terry wasn't coming back?

A. I had no clue.

Q. That was not something he had ever discussed with you?

A. No, sir.

Q. Okay. And a lot of places have an annual evaluation, a job evaluation. You know what I'm talking about when I say a job evaluation?

A. Yes, sir.

Q. Okay. Have you ever seen a job evaluation for the job you're doing?

A. I think we're evaluated every year.

Q. Okay. Well, is it in writing?

A. No, sir.

can get from him maybe talking to, you know, regional managers and stuff like that of different companies and just, you know --

Q. Like if a certain item was selling well but y'all couldn't keep it -- grow it fast enough or whatever, that is, stocking inventory, discuss things like that?

A. Yes.

Q. Okay. And who is your helper? Do you have a helper?

A. Yes.

Q. Who is that?

A. His name is Conrado Antunez C-o-n-r-a-d-o A-n-t-u-n-e-z.

Q. I apologize, but is he Mexican or is he a foreigner?

A. He is Mexican.

Q. Okay. And has he been your helper for how long?

A. Two years.

Q. So since 2006, 2007?

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Q. How do you know what kind of job you're doing? I mean, I know you can read a sales report, but, I mean --

A. Pretty much that, to me that is the evaluation.

Q. Well, do you sit down with Adam or anybody at Bonnie Plant?

A. Me and Adam have sat down almost every year at the end of the season and talked.

Q. Okay. What did he tell you about what kind of job you're doing and what strengths and weaknesses you have or whatever?

A. Yes.

Q. What does he tell you? I don't know.

A. Well, I mean, just that. Just talks about what was done right. I talk about things that -- problems I had, things we can do next year to increase sales in certain areas, you know, any problems with any stores, any help that I

A. No. He started with me last year. This will be his second year.

Q. Okay. Who was your helper in 2006?

A. I had -- started with a man named Michael Rhodes. He worked with me for a month, and it moved to Keith Hunter and also --

Q. He what --

A. Keith Hunter.

Q. You changed helpers. Why wasn't Michael still working with you?

A. He failed to come to work a few days when I needed him, and I had to use somebody else.

Q. Okay. Did you have any conversation with him or --

A. Very little.

Q. Where does he live, do you know?

A. He lives in Brownsville, Tennessee. He did then. I don't know if he still does or not.

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Q. Did he ever come back to work
for Bonnie Plant that you know of?
A. He worked that same season for
other salesmen, and then worked last year
for a salesman.
Q. Is he still working with them,
or do you know who he worked for?
A. Not in Bells, Tennessee, no.
Q. Do you know who he worked for
other than you in Bonnie Plant?
A. I know he worked -- I know
years before he's worked for Terry Watson.
Q. But after he left you, do you
know anybody he worked for?
A. Stanley Johnson.
Q. Is he in Bells?
A. Yes.
Q. Okay. Anybody else?
A. Not that I know of.
Q. So who finished that year with
you, Keith Hunter?
A. Keith Hunter.
Q. Is he still working for Bonnie

this to everybody.
A. Okay.
Q. But is that your commission
statement?
A. Yes.
Q. Do you know what the collected
sales were for your spring season in 2003?
What were they?
A. I cannot recall.
Q. Doesn't it list it there?
A. For 2003?
Q. I'm sorry, 2006. I apologize.
A. That's okay. Yes, collected
sales, I see it. Do you want me to say
it?
Q. Yes.
A. Three thousand seven -- three
hundred seventy-eight thousand.
Q. Is what you collected?
A. Yes.
Q. Okay. Now, do you know what
you did in -- for the spring of 2007, what
your collected sales were?

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Plant?
A. Yes, he is.
Q. Who's he working for?
A. He works -- he kind of works
for all of us. He works at the farm and
helps us load trucks.
Q. Okay. He's just kind of
everybody's helper?
A. Yes.
Q. Where does he live, what city?
A. Bells, Tennessee.
Q. Okay. Now, may -- your first
name is Leslie?
A. Yes.
Q. May I call you Les? Is that
what you go by is Les?
A. Les, yes.
Q. Okay. Les, I'm going to show
you what I've marked as Exhibit 3 to Adam
Alley's deposition, and this is your
commission statement for the spring of
2006. And there is a protective order, by
the way, so I'm not going to be showing

A. Roughly it was four hundred
thousand.
Q. Approximately? Is it over
four?
A. Yes, it was over four.
Q. Okay. And do y'all have a --
your commission varies by how much you
sell, not just -- there is a flat rate
commission for all sales, correct?
A. For a certain percent, yes.
Q. And then it goes up depending
on how much you sell? That is, there are
increases if you sell above the goal,
correct?
A. There are incentives. If you
have an increase on your route, yes, there
are usually incentives to get more money,
yes.
Q. There are sales incentives
where you can make more money if you can
exceed the sales goal or the sales of the
previous year, correct?
A. Yes.

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Q. And there are incentives if you exceed the company's stated sales goal, right? I think it was three seventy-five, three hundred seventy-five thousand was one goal.

A. That was what -- you get paid a certain amount up to three seventy-five and then you can get another amount over -- anything over three seventy-five. That doesn't mean that if you make four hundred thousand you are going to get the increase. It's just on that twenty-five thousand you would get that extra percentage on that twenty-five thousand, not the whole amount.

Q. Okay. Then as a commission salesman, you have to pay certain expenses out of your commissions, correct?

A. Yes, yes.

Q. And tell us what those -- kinds of things those are. For your helper?

A. We have to pay labor for our

A. Approximately, yes.

Q. And if you failed to do that, they can fine you? They can take money out of your commissions?

A. Yes.

Q. Now, how do they know what stores you've worked? How do they know you skipped a store?

A. We have a log that we keep when we are at stores, tickets, delivery reports that we fill out every week and turn in.

Q. Okay. Now, I don't know how much you know about Terry. Have you ever worked with Terry?

A. I mean, I worked in Bells, Tennessee with him, so I mean --

Q. The same physical location but y'all never rode in the truck together?

A. No.

Q. And you never went with him on his route, correct?

A. No.

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helper. We have to pay for racks and signs. Any motel rooms we stay in while we're on the road we have to pay for those. Any tools or lumber that we use on our routes to make racks or signs or anything, we have to pay for all that.

Q. And they have fines, Bonnie Plant has fines or in previous years they have had fines for skipping stores. Do you know what I'm talking about?

A. Yes, sir.

Q. Tell me how that works.

A. We have stores, what we call chain stores, which is Home Depot, Lowe's, Wal-Marts. We're required to work those stores every four weeks during a six-week period. And if we did not work them every four days within a six-week period, then we would be fined.

Q. So you have to go to the chain stores twice a week, is that fair?

A. Yes.

Q. Approximately?

Q. And he never went with you on your route?

A. No.

Q. So you don't know anything about his work ethic or habits or anything like that?

A. No.

Q. Or job performance or anything?

A. No.

Q. All right. And Adam never told -- shared anything with you about Terry, did he?

A. No.

Q. Okay. And you've worked for four -- this is your fifth year?

A. Yes.

Q. Every move that you've made -- you've only worked two different routes, correct?

A. Yes.

Q. The second route that you worked, you were asked if you wanted to

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work?

A. Yes.

Q. Okay. It was your decision to take that route?

A. Yes.

Q. Okay. They never reassigned you to work another route involuntarily?

A. No.

Q. Okay. And I know this sounds crazy, but I need to ask you anyway, you certainly at age thirty-one --

A. Yes.

Q. -- you've never made a complaint of age discrimination because you're not even old enough to make one, right? You're not over age forty?

A. No.

Q. Now, every year that you've worked as a salesman, have you -- and when you are in sales, it's important -- one of the ways they measure, evaluate your performance is based on how the route did the previous year as compared to this

there are several people over that goal.

I mean, I can't even say it was a goal. I mean, it was just that line.

Q. Well, you know what I'm talking about when I say -- we can call it anything you want, a commission break or whatever.

A. Okay.

Q. Every year that you've worked there, have you always made -- your sales always been over that stated amount so that you got additional commissions?

A. Additional over my draw?

Q. No. Over your -- the higher percentage for the incentive, have you always received an incentive?

A. Have I always made more money is what you are asking? I don't understand what you are asking.

Q. Okay. Well, I will try to make it clear. You know how -- what we described earlier over three hundred seventy-five thousand dollars in sales,

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year, correct?

A. Yes.

Q. In every year, have you increased the route, the sales on the route?

A. Every year I've been with Bonnie, I've increased sales on every route I've worked on.

Q. Okay. And then in terms of this stated sales goal which changes from year to year, have you always met that on your route?

A. I'm sorry, ask that again.

Q. You know like I told you before, the three hundred seventy-five thousand was a goal for one year?

A. Uh-huh.

Q. And the commission broke, you got a higher --

A. I wouldn't necessarily say it was a goal. It was just a number they came up with. I don't know why. There are several people under that goal and

you got a higher commission over any amount over that?

A. Okay.

Q. We call that a sales incentive, correct?

A. Uh-huh.

Q. Correct?

A. Uh-huh.

Q. Is that yes?

A. Yes.

Q. And they tell you before the season starts what figure you need to reach in order to obtain an incentive above that?

A. Yes.

Q. Have you always since you've been a salesman sold enough so that you received the additional incentive?

A. I've reached incentives every year. We usually have three or four incentives that you need to reach every year to get an extra percent or more money. So not every year, I have not

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reached all of them, no.

Q. Okay. You've answered my question.

A. Okay.

Q. Sorry it's hard to ask, I guess.

A. I understand.

MR. GERHARDT: Jerry, can I get this straight for a second?

MR. ROBERSON: Sure.

MR. GERHARDT: So I understand, there is no one -- is there one incentive number?

A. No.

MR. GERHARDT: Or are there multiple?

A. There is multiple. Every year there is multiple.

Q. And every year do they put in a document in writing what the incentives are?

A. Yes, a pay plan, yes.

Q. A pay plan? Thank you.

CERTIFICATE

STATE OF ALABAMA)
JEFFERSON COUNTY)

I hereby certify that the above and foregoing deposition was taken down by me in stenotypy, and the questions and answers thereto were reduced to typewriting under my supervision, and that the foregoing represents a true and correct transcript of the deposition given by said witness upon said hearing.

I further certify that I am neither of counsel nor of kin to the parties to the action, nor am I in anywise interested in the result of said cause.

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A. Uh-huh.

Q. So that would be available from Bonnie Plant for every year?

A. Yes.

Q. Okay. And that's what y'all call it, the pay plan?

A. Pay plan, yes, sir.

MR. ROBERSON: All right. Thank you. I don't have anything else for Mr. Branham. Thank you, sir.

Do you have any questions?

MR. GERHARDT: I don't.

MR. ROBERSON: This -- we'll stop the deposition at looks like it's 1:51. Let's go off the record.

(Off-the-record discussion.)

FURTHER THE DEPONENT SAITH NOT

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4:12 24:10,14,15 31:23				
35:22				
2008				
1:19 4:21 16:3 25:16				
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47:23				
3				
3				

**PLAINTIFF ARTHUR WATSON'S
EVIDENTIARY SUBMISSIONS
EXHIBIT 4**

In The Matter Of:

ARTHUR T. WATSON

v.

ALABAMA FARMERS COOPERATIVE, INC., ET AL.

NO. 2:07-CV-520-WHA

ADAM ALLEY

April 9, 2008



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ARTHUR T. WATSON
ALABAMA FARMERS COOPERATIVE, INC., ET AL.

ADAM ALLEY
April 9, 2008

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IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CIVIL ACTION NO. 2:07-CV-520-WHA

ARTHUR T. WATSON,
Plaintiff,

vs.

ALABAMA FARMERS COOPERATIVE, INC.,
D/B/A BONNIE PLANT FARMS,
Defendants.

VIDEO DEPOSITION
OF
ADAM ALLEY
April 9, 2008

REPORTED BY: Eleanor S. Pickett
Certified Shorthand Reporter
and Notary Public

A P P E A R A N C E S

FOR THE PLAINTIFF:

Mr. Jerry D. Roberson
Attorney at Law
Roberson & Roberson
P.O. Box 380487
Birmingham, Alabama 35238

FOR THE DEFENDANT:

Mr. Graham Gerhardt
Attorney at Law
Burr & Forman LLP
3400 Wachovia Tower
Birmingham, Alabama 35203

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S T I P U L A T I O N

IT IS STIPULATED AND AGREED,

by and between the parties, through their
respective counsel, that the video
deposition of ADAM ALLEY may be taken
before Eleanor S. Pickett, Commissioner,
Certified Shorthand Reporter and Notary
Public;

That the signature to and
reading of the deposition by the witness
is waived, the deposition to have the same
force and effect as if full compliance had
been had with all laws and rules of Court
relating to the taking of depositions;

That it shall not be necessary
for any objections to be made by counsel
to any questions, except as to form or
leading questions, and that counsel for
the parties may make objections and assign
grounds at the time of trial, or at the
time said deposition is offered in
evidence, or prior thereto.

I N D E X

PAGE:

EXAMINATION BY MR. ROBERSON

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E X H I B I T S

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ARTHUR T. WATSON
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I, Eleanor S. Pickett, a
Certified Shorthand Reporter of
Birmingham, Alabama, and a Notary Public
for the State of Alabama at Large, acting
as Commissioner, certify that on this
date, as provided by the Federal Rules of
Civil Procedure of the United States
District Court, and the foregoing
stipulation of counsel, there came before
me at the law offices of Burr & Forman
LLP, 3400 Wachovia Tower, Birmingham,
Alabama, on April 9, 2007, commencing at
11:36 a.m., ADAM ALLEY, witness in the
above cause, for oral examination,
whereupon the following proceedings were
had:

MR. ROBERSON: This is the
videotape deposition of Adam Alley. It's
being taken in the case of Arthur Watson,
plaintiff, versus Alabama Farmers
Cooperative, Inc., doing business as
Bonnie Plant Farms, defendant. This case

MR. GERHARDT: Yes, ma'am.

EXAMINATION BY MR. ROBERSON:

Q. Mr. Alley, I introduced myself
before the deposition. But have you ever
given a deposition before today?

A. Yes.

Q. Okay. So you know today
you're under oath just like in a court of
law, correct?

A. Yes, yes.

Q. And, if you would, there is
only one microphone, if I could get you to
articulate your answers out loud and speak
up a little bit, okay --

A. Sure.

Q. And today if I ask you a
question that you don't understand, please
let me know that you don't understand it,
okay?

A. Okay.

Q. If you answer it, I'm going to
have to assume that you understood it.

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is pending in the United States District
Court For the Middle District of Alabama,
Northern Division. It's CV number 07-520.
We are here today at the offices of BURR,
Forman in Birmingham. It's now 11:40 on
April 9th, 2008. My name is Jerry
Roberson. I'm the attorney for the
plaintiff, Terry Watson. And I would ask
all counsel of record to state their name
and who they represent.

MR. GERHARDT: I'm Graham
Gerhardt with Burr & Forman representing
the defendant.

MR. ROBERSON: Would you swear
our witness, please, ma'am.

ADAM ALLEY,
having been first duly sworn, was examined
and testified as follows:

THE REPORTER: Usual
stipulations?

MR. ROBERSON: Yes.

Fair enough?

A. Okay.

Q. Now, do you know Terry Watson?

A. Yes.

Q. And was he assigned to work
under your supervision for a period of
time?

A. Yes.

Q. Where do you work, sir?

A. Bells, Tennessee.

Q. And where is that city in
Tennessee?

A. West Tennessee, near Jackson,
about an hour east of Memphis.

Q. And who do you work for?

A. Bonnie Plants.

Q. How long have you worked for
Bonnie Plant?

A. Since '95.

Q. And have you always worked in
Bells, Tennessee?

A. Yes.

Q. Did you start as a salesman?

2 (Pages 5 to 8)

ARTHUR T. WATSON
ALABAMA FARMERS COOPERATIVE, INC., ET AL.

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A. Yes.

Q. Okay. And you are now working
as a station manager?

A. Yes.

Q. Who is your supervisor?

A. Joe Stewart.

Q. What is his position?

A. National sales manager.

Q. And does he have an office in
Union Springs?

A. Yes.

Q. So if you have a question or
you need to get in touch with Joe, you
call him at his office?

A. Yes.

Q. Do you have access to fax
machines and e-mail as well?

A. Yes.

Q. Okay. And have you used all
those ways to contact Joe?

A. Probably everything short of
fax. Normally it's almost always phone.

Q. Okay. And I'm sorry, you have

Q. Span a large geographical
area?

A. Pretty much, yeah.

Q. You would have to drive for a
long time on that route?

A. Yes.

Q. Is that correct?

A. Right.

Q. Do you know what I mean when I
say a short route, that is, the stores are
close together?

A. Right.

Q. Not that much driving?

A. Right.

Q. Okay. And what y'all try to
do at Bonnie Plant is to make your routes
somewhat even, correct?

A. Right.

Q. Have about the same number of
stores --

A. Right.

Q. -- on each route?

A. Right.

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Page 12

been a station manager since what date?

A. 1999.

Q. Okay. So for four years you
worked a route in Bells?

A. Yes.

Q. How do y'all identify the
routes? Are they by number or are they by
name?

A. They are by number.

Q. Okay. What route did you work
in Bells?

A. Eighteen two.

Q. Okay. And what does that
consist of, sir?

A. At the time it was Western
Kentucky, Southern Illinois and a little
bit of Eastern Missouri.

Q. Would that be considered a
long route?

A. At the time it was, yes.

Q. Okay. And do you know what I
mean when I say a long route?

A. Why don't --

Q. Correct?

A. Right.

Q. Just to be efficient, right?

A. Right.

Q. Now, when you worked as a
route salesman, who was the station
manager?

A. Joe Stewart.

Q. Oh, Joe worked in Bells?

A. Yes.

Q. The same Joe Stewart?

A. Yes.

Q. He was a station manager from
'95 to '99?

A. Uh-huh.

Q. Is that correct?

A. That's correct, through '98.
I guess that would be '94 to '98 because I
started the spring -- beginning of '99.

Q. Okay. All right. So you're
telling me it's a seasonal business?

A. Right.

Q. And y'all consider the spring

3 (Pages 9 to 12)

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season to be your best season?

A. Right.

Q. Correct?

A. Right.

Q. And going back to this, Joe hadn't been the nationwide sales manager the whole time. He was formerly a station manager in Bells --

A. Right.

Q. -- is that correct?

A. Correct.

Q. Okay. And then did he leave and become the national sales manager?

A. Yes.

Q. And you moved up to his job?

A. Right.

Q. Now, when you worked as a route salesman in Bells, how many other salesmen were there?

A. There was six or more every year.

Q. And what you do as a route salesmen is you drive a truck, correct?

A. Right.

Q. And you get plants and vegetables to different stores, correct?

A. Correct.

Q. You sell them but you also stock the stores, correct?

A. Right.

Q. So there is some labor involved as well as sales activity --

A. Right.

Q. -- correct? And when you do this work, you don't have to have a CDL --

A. No.

Q. -- correct? You just have to be able to drive -- is it a six-wheel truck; is that correct?

A. Uh-huh, correct.

Q. And, sir, today -- I know when we normally talk, we say uh-huh and huh-uh, but today I'm going to ask you to answer out audibly yes or no, okay? Just so we have a clean record. Fair enough?

A. Fair enough.

Q. I will try to remind you. I'm not doing that to annoy you, okay?

Then when you took over as the station manager in Bells, did you still have six or more salesmen?

A. Yes.

Q. Okay. And how many do you have now?

A. Nine.

Q. All right. And Terry Watson worked under your supervision in 2004 and '5 --

A. Yes.

Q. -- is that correct, those seasons, correct?

A. Correct.

Q. Okay. And at the time that he worked under your supervision, he actually was previously working down in Louisiana, correct, or Texas and swapped?

A. Working out of Texas.

Q. Yeah, and swapped, exchanged routes. He had a long route in Louisiana

or Texas, and he exchanged it -- who was the guy he swapped with?

A. Butch Stewart.

Q. Okay. Now, is Butch related to Joe?

A. Brother.

Q. Okay. And Butch went to his route and he went to Butch's route, correct?

A. Correct. I have no idea -- I don't know anything about the route in Texas, but they did want to swap routes.

Q. Okay. And in order to make that exchange, did they have to get your permission?

A. Yes.

Q. Did they?

A. Yes.

Q. Okay. And so was Charlie Trussell over Texas?

A. No.

Q. Who was over there?

A. Bill Rainer was over Texas.

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4 (Pages 13 to 16)

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Q. They had to get his permission too I assume?

A. I would gather.

Q. Yeah. And did they also have to get Joe Stewart, the national sales manager, get his permission?

A. Yes.

Q. Okay. Now, is there any paperwork about that permission or is that just an oral permission?

A. Just oral.

Q. Okay. And the route that Butch had been working in Tennessee, was that considered a short route?

A. A shorter route.

Q. Okay. Did that one have a number?

A. Eighteen three.

Q. Do you know where that route -- what was on that route, that is, what was its geographic location?

A. Basically. Basically Jackson, Tennessee south to the Mississippi line

special seat. Do you know what I'm talking about?

A. No.

Q. Some kind of suspension or seat?

A. Not particularly, no.

Q. Are there different types of vehicles?

A. There are all -- at that time, they were all Hino trucks that as far as I could see they're basically the same trucks.

Q. Okay. Well, he claims that there is some kind of seat that absorbs some of the shock when you drive it. It's got a name, but I can't remember it.

A. Okay.

Q. Do you know what I'm talking about?

A. No. It could be -- I just -- I mean, I don't --

Q. Air ride, does that make -- have you heard of that name?

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and it crossed the eastern side of Memphis.

Q. So it was Tennessee and Mississippi?

A. Just Tennessee. He didn't go into Mississippi.

Q. Oh, it didn't go into Mississippi?

A. It seems like one year it was one store right across the line, but basically Tennessee.

Q. Okay. So all the stores were either in or near Tennessee?

A. Right.

Q. Okay. And how many -- about how many stores would there be?

A. Thirty, just a ballpark.

Q. Sure. That's fine. So Terry worked there in 2004, correct?

A. Correct.

Q. And he's testified in this case and he said that when he came, he asked for a truck with some kind of

A. It could be, yeah.

Q. Okay. And he says that in 2004, he was in a truck that had that type of seat, that suspension in that seat. Does that make sense?

A. Makes sense.

Q. Okay. But he said in 2005, y'all changed his vehicle so that he didn't have that. Now, do you know why they would change vehicles in 2005?

MR. GERHARDT: Object to the form.

Q. You can answer. He just does that to -- for the record and to annoy me.

MR. GERHARDT: For the record.

A. As far as whatever we do with the trucks or what I do with the trucks, they are assigned according to need on the routes. The longer routes get newer trucks, and I did have probably -- could have had that year where a longer route needed a truck, that particular route. Eighteen three didn't go that many miles

5 (Pages 17 to 20)

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from home. So if you had a problem with the truck, I don't remember any problem with it, but if I made the change, that's probably why it was.

Q. Okay. So what you are saying is you had nine or more routes?

A. Right.

Q. And so you would make the truck assignments based on the length of the route, that is, you would assign the newer trucks to the longer routes?

A. Right.

Q. Is that correct?

A. Right.

Q. So if Terry's vehicle changed, it was for that reason?

A. Sure.

Q. Okay. Now, did Terry ever mention anything to you about -- in 2005 about an air ride seat or make a request for one?

A. Not that I remember, but that was a long time ago.

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Q. That's exactly right. That was a long time ago. If he had made that request, is there any reason why he couldn't, that you know of, that he could not have received that type of vehicle?

MR. GERHARDT: Object to the form.

Q. You can answer. I mean, I'm not in the plant business.

A. What I answered before was the trucks were assigned according to the need and how far they went from home. So if I changed them around, that was the reason. But, like I say, that would be -- that would be the reason, putting the trucks where they were needed the most.

Q. Tell me, if you can, do you have the -- approximately the same salesmen that you had in 2004 and 2005, or do they change over a lot?

A. They change over quite a bit. Well, let me think. I've got one, two, three -- no, I have got -- majority of the

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them were the same.

Q. Let's do it this way, if we can. Can you tell me who's working for you now and then, if you would, just identify anybody who wasn't working in 2004 or '5. Can you do that? I know Les is working?

A. Les is still working for me.

Q. Okay. And he took Terry's route, right?

A. He took route eighteen three.

Q. That was the one Terry was working?

A. Correct.

Q. I don't mean it like he owned it.

A. Right.

Q. I just mean he succeeded Terry --

A. Right.

Q. -- in taking over that route.

Okay.

A. Stanley Johnson still works

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for me. He worked for me now and then.

Q. What route is he? Is he --

A. Eighteen one.

Q. Okay.

A. Willie Hughes, eighteen oh now. He was on a different route before, but he worked for me both times.

Q. Eighteen hundred?

A. Uh-huh.

Q. How old is Les, about, if you know?

A. Thirty-five.

Q. How about Stanley?

A. About fifty.

Q. Willie?

A. Fifty-six or -seven probably.

Q. Okay. I'm sorry, keep going.

A. Johnny Roy Finlinson worked for me then, but he does not work for me now. He was promoted to a mini station manager this year. He's --

Q. What route did he run?

A. He ran eighteen two. And he's

6 (Pages 21 to 24)

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1 sixty, sixty plus, a little over sixty,
2 sixty-one or -two.
3 Q. Now he's a station manager?
4 A. Right, a mini station manager.
5 Q. Mini, what does that mean?
6 A. Something we're doing new with
7 one or two -- one or two or three trucks
8 just trying to better service, breaking
9 down some longer routes, trying to better
10 service. One, two or three trucks I have
11 in town and a big station ships them to
12 their plants. They don't grow anything
13 there. It's shipped to them.
14 Q. Okay. See if you have got --
15 this is the way I understand it. If
16 you've got a long route, then you can get
17 a long way from your plants so that if you
18 run out of plants, you have to come back,
19 all the way back to get some more?
20 A. Right.
21 Q. And this is a way to have a
22 station further out so that you wouldn't
23 have to drive as much just to get plants,

1 A. He -- I'm not positive. He
2 was there in 2005. I don't remember about
3 '4. And eighteen seven --
4 Q. How old is he?
5 A. Forties.
6 Q. Okay.
7 A. Eighteen seven is James --
8 James has changed. James was on eighteen
9 six at that time. Now he's on eighteen
10 seven.
11 Q. Okay. Who's on eighteen six?
12 A. Eighteen six now is Michael
13 Phillips. And he's new this year.
14 Q. Okay. He was just hired?
15 A. Just hired.
16 Q. How old is he?
17 A. Twenty-seven or -eight.
18 Q. Okay.
19 A. Eighteen eight is Pat Gaines.
20 He was not with me at the time, and I did
21 not have that territory at the time.
22 Q. Okay. How old is he?
23 A. He's forty -- no, he's fifty.

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1 is that a fair way of saying it?
2 A. Pretty much, yeah.
3 Q. Okay. All right. Keep going.
4 After Johnny, who else?
5 A. Let's see. Four.
6 Q. Where is he a mini station
7 manager, by the way?
8 A. Salem, Illinois.
9 Q. Is that off of your territory?
10 A. About half of it was.
11 Q. Okay.
12 A. Eighteen five, Tony Brown is
13 on it now, and he worked for me then and
14 now.
15 Q. How old is he?
16 A. You are going to get me in
17 trouble there. Sixty plus.
18 Q. Okay.
19 A. Eighteen six is James Decouto.
20 Q. Can you help me with that
21 spelling?
22 A. D-e-c-o-u-t-o.
23 Q. Thank you.

1 And then eighteen nine I no longer have.
2 I'm trying to think. I don't even
3 remember who was on it at the time when
4 Terry was there, and I don't have that
5 route. That territory I gave up, that's
6 all.
7 Q. You don't have that territory,
8 what did you say?
9 A. No, I gave -- I don't have
10 that territory anymore.
11 Q. Okay. Does somebody else?
12 Has it been reassigned to another manager?
13 A. Been assigned to another
14 manager.
15 Q. Okay. But at the time in
16 2004, you had it?
17 A. Had it.
18 Q. Do you know who worked there?
19 A. I don't remember who worked
20 it. A lot of them have changed around, so
21 I don't remember.
22 Q. All right. Now, Johnny
23 Finlinson, you said he was sixty or more,

7 (Pages 25 to 28)

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and he's been assigned as a mini station manager?

A. Correct.

Q. How long has he been with the company that you know of?

A. That I know of, he's been there -- seems like he came to me in 2000, 2001, or one of the two, and he worked years in the '70s and '80s.

Q. He's been a long time in the plant business?

A. Long time employee, right.

Q. Is that right?

A. Right.

Q. And then Tony Brown, does he have a lot of experience in the plant business?

A. Right.

Q. Okay. Have Stanley, Willie, Tony, James all been there the whole time you've been the station manager?

A. James has not. The rest of them have.

Q. Do you evaluate them in any way?

A. We do at the end of season, you are evaluating -- I go through each salesman and see what I like or don't like.

Q. Identify strengths and weakness?

A. Identify, right, right.

Q. Do you sit down with them and, you know, tell them what they need to do to improve and stuff?

A. Usually, not always, but usually.

Q. Did you ever do that with Terry?

A. What I did with Terry was throughout the season.

Q. Okay. Well, see, I guess I'm trying to understand why y'all would change a salesperson and reassign him to another route maybe even out of that -- out from under that station manager. Can

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Q. And have they kept the same routes?

A. No. Some have, some have changed and some have kept the same ones.

Q. Well, I'm not in the plant business, so I need your help. What -- why would you change the route of a salesman who was -- they have a quota, a sales quota, correct?

A. You have a goal, but that's about all.

Q. Well, a sales goal in terms of their commission, they get a certain percentage of their sales, right?

A. Right.

Q. And that changes year to year, what their goal is?

A. Right. They have a goal, but, I mean, it's nothing more than a number on paper. It could be -- yes.

Q. Do y'all evaluate them in writing?

A. Not in writing, no.

you help me with that, why would you do that?

A. Well, we have -- everything -- anything you can imagine. We have salesmen that ask for -- to change. They want to be closer to home, they want to be further from home, they want to be -- different things.

Q. That's when the salesmen initiates a change, though, correct? That's one set of circumstances. But why do y'all do it on an involuntary basis? That's my question.

A. I'm not real sure. I guess there would be times when another route may better suit the salesmen, whether it's long or short or starts earlier in the year, later. I mean, just --

Q. Who makes that decision?

A. Usually I guess it would be the station manager and sales manager.

Q. Well, Terry worked for you in 2004 and 2005, correct?

8 (Pages 29 to 32)

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A. Correct.

Q. How would you rate his job performance on route -- was it eighteen oh three?

A. Right.

Q. How would you rate that?

A. Had -- we had numerous conversations about him not having -- things being in disarray, his stores not being kept neat and clean, and, you know. In all these stores we're given an area, and we bring in fresh product, take out everything that's bad, and we're -- that's strictly, you know, the salesman decides that, but it's pretty much left up to us. And we had had numerous conversations about him not picking up trash, not picking up the bad stuff, stuff -- plants, you know, this tall (indicating) that looked terrible left on the route. And we also bring back all of our trays and reuse them and crates and reuse them and -- crates that onions come in, and had to

and advise their employees of their expectations?

A. No.

Q. Okay. Well, there are -- imagine this, there are employers who do use writings to evaluate and discipline their employees and they -- even if it's an oral, for example, the first step of any process might just be a warning. And although it's a warning, they may write it out and get the employee to acknowledge that they were counseled or given a verbal warning. Have you ever seen anything like that?

MR. GERHARDT: Object to the form.

Q. You can answer.

A. No.

Q. Do y'all have any kind of forms at Bonnie Plant Farms that would assist you in that process?

A. Today we do.

Q. When did those -- when did you

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stay on him about getting those back in, and we just had talked about -- time and time again about getting that done, and you know, just no improvement was made.

Q. Tell me about your process there for salesmen. Do you know what I mean when I say a progressive disciplinary process? Do you know what that means?

A. Not really.

Q. Well, Adam, do you have a college degree?

A. Yes.

Q. Where did you go to college?

A. Auburn.

Q. And what did you get your degree in?

A. Agri business, ag economics.

Q. Did you -- have you worked for anybody other than Bonnie Plant?

A. I have.

Q. Have you ever worked for an employer who uses some written communication devices to rate and evaluate

begin using those?

A. I don't remember what year we started.

Q. Okay. So y'all have personnel forms?

A. Right.

Q. Have access to them off the computer?

A. They're mostly sent to us in a -- we have them. I guess we could get them on the computer.

Q. Do y'all have an HR, human relations, department?

A. Yes.

Q. If you have a question about somebody's vacation or leave or if they are out sick or something, is there someone you can call?

A. Yes.

Q. Who is that, sir?

A. It's through our home office, Alabama Farmers Co-Op. I'm not sure who the person's name is.

9 (Pages 33 to 36)

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Q. So you haven't had any
occasion to speak to them?
A. No.
Q. Is that correct?
A. That's correct.
Q. Okay. And can you -- as a
station manager, do you have the authority
to write someone up, that is, put a
written warning or written disciplinary
notice in their personnel file?
A. Yes.
Q. Does each employee have a
personnel file, each salesmen have a
personnel file?
A. Yes.
Q. And have you ever had an
occasion to write someone up, get them to
sign it and acknowledge that this is
unsatisfactory behavior and it must be
improved upon?
A. No.
Q. Okay. Can you suspend a
salesman?

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A. I have the authority. But the
way our business works, you don't -- I
mean, you are working twelve, fourteen,
sixteen weeks out of the year is your main
time. You know, you really can't suspend
-- the job really has to be done by
somebody. But, yeah, I guess I would have
the authority.
Q. Can you make a decision to
fire --
A. Yes.
Q. -- and terminate an employee?
A. Yes.
Q. Do you have to have anybody
else's approval, Joe Stewart or anybody
else?
A. I do have to talk to them
about it first.
Q. To Joe?
A. Right. Joe or Mr. Kyle or
Dennis, somebody in management.
Q. Okay. And do you have what I
call hiring authority, that is, can you

offer a job to someone?
A. I have to go through them
first.
Q. You have to get approval for a
slot or a budgetary --
A. Right.
Q. -- position, maybe to add a
route or something; is that correct?
A. Yes.
Q. So you've been a station
manager since approximately 1999, and to
date, you've never had a written
discipline of any salesperson; is that a
fair statement?
A. Right.
Q. Okay. And so you never had
any occasion or Mr. Watson's job
performance was never so bad that you were
required to write him up or make anyone
else aware of it, correct?
MR. GERHARDT: Object to the
form.
Q. Correct?

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A. I didn't write anybody up.
Q. Okay. So you didn't write
Terry up?
A. It was handled verbally. We
didn't write things up. And it was
verbally given to him numerous times.
Q. Okay. And the things you've
told me about that you verbally
communicated with Terry were that he --
his stores were not appropriately neat and
he didn't satisfactorily return the trays,
the containers, that held the plants.
Anything else?
A. Didn't keep his truck clean.
It was like a dumpster, dirty inside and
out. I say that in the cab as well as the
bed, not the outside of the truck.
Q. Now, did you ever have any
occasion to go to any of his stores?
A. Yes.
Q. Do you have a camera?
A. Do what?
Q. Do you have a camera?

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A. Yes.

Q. Did you take any photographs of his stores?

A. No. That was before -- I do now. Digital changed the whole works there. Before it was film developed -- I would say they probably had digital cameras then, but I didn't have one, so --

Q. Any customer that Terry Watson had on his route, did you ever get a written complaint from any of them?

A. No, we don't get written complaints from anybody.

Q. Okay. Well, did you get verbal complaints from any of them?

A. Yes.

Q. Who?

A. Lowe's.

Q. Lowe's where?

A. Germantown Parkway, Memphis, Tennessee.

Q. Do you remember the nature of the complaint?

A. Best of my knowledge, on the spring sales of '04, he had a decrease from the year before and an increase in spring sales of '05.

Q. An increase from '04 or an increase from 2003?

A. Both.

Q. Okay. He sold three hundred -- over three hundred thousand dollars worth of plants in 2005, correct?

A. I don't remember the exact number. I was thinking it was around three hundred thousand. I don't remember the number.

Q. Do you know a gentleman named Tate?

A. Yes.

Q. What's his last name?

A. Gatlin, I think.

Q. What is his job?

A. Safety director.

Q. Is he over your trucks?

A. He's over the safety of Bonnie

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A. Just bad plants, plants overgrown and stuff that needed to be picked up that wasn't salable left.

Q. Returns that weren't collected?

A. Returns that weren't collected.

Q. Okay. And the way it works at Bonnie Plant, they sell on consignment. So when they return a plant, that comes off their -- the salesmen's --

A. At the independents, smaller stores, it does. Today all the big boxes is pay by scan. So we get paid by what goes through their computer. So we still pick them up, but it's not paper. You don't write pick tickets. In all the big boxes we deliver whatever they need, pick up whatever is bad and there is no paperwork whatsoever.

Q. Okay. Well, do you recall if Terry met his sales goals for 2004 and 2005?

Plant Farm.

Q. Over the whole country?

A. Uh-huh.

Q. Is that yes?

A. Yes.

Q. Okay. And so he handles the paperwork for -- your drivers have to have an annual card that shows they're -- from a health standpoint they're able to operate a motor vehicle?

A. It's biannual.

Q. It's twice every two years?

A. Once every two years.

Q. Okay. I'm sorry. But they have to have a card and be examined by a physician, correct?

A. Correct.

Q. Be certified as being in the state of health that they can operate a vehicle?

A. It's a DOT physical.

Q. Okay. So he handles, he deals with the salesmen from that aspect,

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correct?

A. Correct.

Q. Okay.

A. His office does.

Q. Where is his office?

A. Union Springs.

Q. Oh, okay. Well, did you know that Terry underwent some surgery in 2005, in the fall of 2005?

A. I knew he was going to have it, but I don't particularly remember that he did or didn't.

Q. And he had a knee replacement and had some surgery done on his feet. Were you aware of that?

A. I was aware he was going to have them, but I didn't know that --

Q. Yeah. Okay. All right. Now, when does y'all's season start in Bells, Tennessee?

A. End of January, first of February.

Q. When do your drivers, when are

really what I'm asking you from that perspective. Are there any documents that would show when the season began and when the salesmen were to report in 2006 for the spring season in Bells, Tennessee? Are there any documents that you're aware of?

A. No. Some salesmen would be -- I mean, like new routes that, you know, they wouldn't start getting -- wouldn't start being paid a draw or whatever until their route actually started. But I don't really know --

Q. Well, then, there would certainly be payroll records that would reflect when the route started, correct?

A. Well, no. Some salesmen would receive -- draws could start -- see, our -- the last money is not paid -- on the draw checks, they go through January from the previous year. So, no, it wouldn't be.

Q. Well, so you're telling me

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they required to report for work?

A. Within that same time frame, just according to where the routes are, end of January to during February sometime.

Q. What, do y'all send out a letter telling them to report? What do y'all do?

A. Usually verbal contact on the phone because each route is different. I mean, I have got routes that go to Arkansas. Generally plants sell from west to east or whatever -- north -- I mean south to north. So according to each route, you sort of talk to them. In January the weather fluctuates. So you may tell them, you know, we'll -- we stay in constant contact, may let you know to come next week or if the weather is terrible, you come next week and that kind of thing.

Q. Well, Mr. Alley, I normally tend to deal in documents, so that's

that, to your knowledge, there are no written documents that -- from Bonnie Plant Farms that would indicate when the season began and when the salesmen were to report to work in -- for Bells, Tennessee in the calendar year 2006?

MR. GERHARDT: Object to the form. Asked and answered.

Q. You can answer. You don't know of any?

A. Not that I'm aware of, no.

Q. Okay. Well, just make it Exhibit 1.

(Whereupon, Plaintiff's Exhibit 1 was marked for identification.)

Q. Did you have any contact with Terry Watson in the fall, in the winter of 2005 or before the season started in 2006?

A. I don't -- I don't remember if I did or not. I mean, that's --

Q. You got a phone number for him, don't you?

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A. I don't today, no.

Q. Well, you did in 2005, didn't you, you have a cell phone for him?

A. Seems like I had a home phone for him. I don't remember cell phone.

Q. You can't contact -- how do you contact your salesmen if you need to talk to him during the week? Does he have a radio or something?

A. Oh, are you talking about during the season?

Q. Yeah.

A. During when he's working, sure, we had cell phones.

Q. Well, that wouldn't change, would it, when he went home?

A. Sure, we have a lot of them have cell phones and -- several that use one service in Tennessee and that number doesn't work, doesn't work when they're home.

Q. Okay. You have an address for him, don't you? You know where to contact

him back?

A. Prior performance.

Q. And what about his prior performance led you to that conclusion?

A. Just continually not doing things that I asked him to do, which were straighten up the stores, clean up the stores, clean up his truck, oversee his helper loading the truck. Like I said, keeping the trunk clean, keeping the stores -- keeping the junk out of the stores, the crates and trays picked up.

Q. Did you ever have any conversation with Terry Watson where you told him that you were going to recommend that he not be returned to your supervision?

A. I -- I did in the spring of '05 when -- after numerous times of having that same conversation, had that -- you know, that that's what I intend to do. If you don't do better, I'm not going to bring you back. But outside that, no, I

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him, correct? You can write him a letter, correct?

A. Yes, I could, yes.

Q. Did you have any correspondence with Terry Watson about his health prior to the 2006 season?

A. Not that I remember, no.

Q. Did you make any decision or make any recommendation as to Terry Watson's employment with Bonnie Plant Farms for the year 2006?

A. Yes, I had made Joe Stewart aware that I didn't want to bring Terry back for that season.

Q. When did you do that, sir?

A. I don't remember exact dates. I would definitely say it was early fall of that year.

Q. And is there any writing, e-mail or letter about that decision and recommendation?

A. No.

Q. Why didn't you want to bring

didn't have any conversation with him in the fall of '05.

Q. So this gentleman was an underperformer for you for two years, and there is no writing that reflects any aspect of his underperformance, correct?

A. Correct.

Q. We just have to take your word for it, correct?

MR. GERHARDT: Object to the form.

Q. You can answer.

A. I guess, sure.

Q. I mean, there was nobody else in the room when you were talking to Terry, was there?

MR. GERHARDT: Object to the form.

A. I don't remember. I would say it was -- that conversation took place enough I'm sure there was probably somebody around, I don't remember who, but --

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Q. Can you presently name any
witness to any of these conversations?
A. No, not that I remember, no.
Q. Okay. So you spoke with Joe
Stewart and told him you didn't want to
bring Terry back in 2000 -- for the 2006
season, correct?
A. Correct.
Q. Did you speak with anyone
other than Joe Stewart?
A. Not that I recall, no.
Q. Do you recall when it was you
made the recommendation other than the
fall of 2005?
A. That's all I remember.
Q. Okay. Do you know why Terry
wasn't told that he wasn't returning, do
you know?
A. I don't know when he was told.
Q. Let me show you what I've
marked as Exhibit 1 to your deposition.
Have you ever seen that letter that's
dated January 10th?

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A. (Reviewing document.) Okay.
What was your question now?
Q. Have you ever seen that letter
before today?
A. No.
Q. Well, it appears from your
reading of that letter that Mr. Watson
hadn't been told as of January 10th that
he wasn't returning, correct?
MR. GERHARDT: Object to the
form.
A. Looks like this letter was
written on January 10th. I have no idea
when he was told.
Q. When was Les assigned to
Terry's route in Tennessee?
A. I don't remember dates, but
starting of the spring, starting of the
2006 season, which I don't -- I mean, I --
Q. Well, was he already working
for Bonnie Plant?
A. Yes.
Q. What route had he worked in

2005?
A. It was an Illinois route. The
numbers have changed around so much. I
believe it was eighteen five at the time.
Q. Was that under your
supervision?
A. Yes.
Q. So did you have to hire
someone to take Les' route then in
Illinois?
A. I did. I hired the guy named
Jerry Broglund. I think it was Jerry
Broglund. That route has changed over a
few times, but seems like he was a sixty
or so gentleman and he worked for
Tennessee Farmers Co-Op and I hired him.
Q. You hired Jerry Broglund to
replace Les, correct?
A. Correct.
Q. All right. And Les replaced
Terry Watson, correct?
A. Correct.
Q. And Les is approximately

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thirty-five years old?
A. Approximately.
Q. How long had Les worked for
Bonnie Plant Farms before he replaced
Terry?
A. Three or four years. Three
years, I think.
Q. Under your supervision?
A. Most of it.
Q. Does he have a college degree?
A. I don't -- I don't think so.
Q. Who hired -- did you hire Les?
A. No. I did hire him to come
to -- for that route. But, no, he was
hired by -- he was a helper in I think
Arizona at the time, and he came to me as
a route man.
Q. I mean, did you know him?
A. No.
Q. Before he went to work for
you?
A. No.
Q. Who assigned him to work under

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your supervision?

A. There was a previous salesman, had to fire someone, let someone go, and I don't really remember. I gather it would have been -- was Joe Stewart. It was -- after the season started, someone couldn't handle a job and I had to replace him pretty quickly, you know, pretty quickly. And so he was a helper in I believe it was Arizona.

Q. Okay. Have you had occasions to fire route salesmen?

A. Yes.

Q. That worked under your supervision?

A. Yes.

Q. Can you name any of the people that you have fired?

A. Let me think about it a minute. No, not really, I mean, it's been several, but it's been that long ago. That was probably the last one, so I don't remember the names.

A. Right.

Q. So if we could identify them, that would be a help to me.

And any of those people, did you sit them down before you fired them and tell them look, you're not getting the job done, this is what I need you to do and if you don't do it, you're going to be fired? Did you do that?

A. Yes.

Q. Okay. Did you make any writing?

A. No.

Q. Okay.

(Whereupon, Plaintiff's Exhibit 2 was marked for identification.)

Q. Let me show you what I've marked as Exhibit 2. Have you ever seen that letter before today?

A. No.

Q. Do you agree with me that Terry Watson makes a written complaint of

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Q. Well, are there records that would reflect that they worked for you and were fired?

A. Records?

MR. GERHARDT: Object to the form.

Q. Yeah.

A. They worked for me.

Q. Personnel files that would show they were terminated?

MR. GERHARDT: Object to the form.

A. Probably not. I know there would be records that show they worked for me.

Q. Could we get their names?

A. Yeah, we could get names.

Q. Okay. I mean, can you provide those to Mr. Gerhardt?

A. I would think our personnel department could get that.

Q. Okay. That's all I'm asking. I don't know who they were, so --

age discrimination in this letter? Do you agree with that?

A. It states he believes -- that's his belief, yes.

Q. Okay. Now, have you had any training about employment practices?

MR. GERHARDT: Object to the form.

Q. You can answer.

A. What are you --

Q. Well, do you know that age discrimination is illegal?

A. Sure.

Q. Have you been trained on age discrimination?

A. I don't know that I've been trained on it, no.

Q. Do you know what retaliation is?

A. How would you define that retaliation?

Q. Well, it's when you punish someone for making a complaint of age

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discrimination, that's one type of retaliation. Are you aware that that is illegal?

A. Sure.

Q. The law protects you from discrimination based on your age. It also protects you when you make a complaint of age discrimination. You're aware of that?

A. I don't know that I'm -- I realize it's -- no, I don't know that I'm aware of that, but I realize it's common sense, but, I mean --

Q. And, in fact, today you're here at my request in an age discrimination case. And if you give testimony that Bonnie Plant does not like, they cannot punish you for your testimony. Are you aware of that?

A. I am now.

Q. Were you before?

A. Just never really thought about it really. I knew I was going to do the right thing and everything else will

A. Right.

Q. They get paid a draw against their commission --

A. Right.

Q. -- correct? And if you don't sell enough plants, you can wind up the year upside-down, right?

A. Sure.

Q. Okay. But if you meet your sales goal, then you get a higher commission than salesmen who do not meet their sales goal, do you agree with that?

A. Yeah, strictly percentages. I mean, it's still a numbers thing.

Q. Yeah. But actually the commission changes, you get a higher commission rate if you meet your sales goal, correct?

A. Our pay plan is different. Some -- most of the time. But most of the time it would just be -- if you're in X percent, the higher the sales were, obviously the higher the salary would be

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take care of itself.

Q. How old are you, Adam?

A. Forty-one.

Q. If Terry is sixty-two, would you agree with me that you're substantially younger than him, I mean twenty-one years?

MR. GERHARDT: Object to the form.

Q. Would that be a fair statement?

A. I'm younger.

Q. Yeah. And in 2005, you were, what, thirty-eight?

A. If that's -- you do the math. If that's right, that's right.

Q. Okay. Now, Terry Watson received a commission when he worked under your supervision, correct?

A. I would assume so.

Q. All route salesmen can earn a commission, correct, that's how they get paid?

just based on the numbers.

Q. And y'all change the routes sometimes annually, correct?

A. Sometimes, you're correct.

Q. And you compare how the route performed to the year prior, correct?

A. Correct.

Q. Now, sometimes you may make changes that may affect the route, correct, either negatively or positively?

A. Correct.

Q. I mean, you may add stores or delete stores?

A. Right.

Q. But you still make that comparison in order to try to evaluate a salesman's performance, correct?

A. Right. And when we make that comparison, if it's changes, it would be made considering any changes. I mean, it would be -- if a territory was taken off, we took it off of the year before. I mean, there were equal comparisons.

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Q. Okay. So you try to compare apples to apples?

A. Apples to apples.

Q. Sure. Okay. I tell you what, Mr. Alley, I have one-hour tapes and we're at about fifty-five minutes. So with your permission, I'm going to take a break and change tapes. I'm not going to keep you much longer, but I do need to get some more information.

A. We'll take a break and run to the restroom.

MR. ROBERSON: Let me just do this. We're going to take a break here. It's 12:35. Off the record.

(Whereupon, a break was had from 12:35 p.m. until 12:43 p.m.)

(Whereupon, Plaintiff's Exhibits 3 - 7 were marked for identification.)

MR. ROBERSON: All right. This is tape two of the video deposition

sixty-three thousand.

Q. Okay. And was he doing a good job for you up there on that route?

A. He was doing a pretty good job.

Q. Okay. Then I'm going to show you what I've marked as Exhibit 7 to your deposition. And this is Terry Watson's commission from Bonnie Plant statement for the year 2004 when he took over Mr. Stuart's route; is that correct?

A. Commission for spring of 2004, correct.

Q. All right. What was his sales figure for 2004 on that same route?

A. Two hundred fifty-five thousand.

Q. Okay. So he was just under Mr. Stuart; is that correct?

A. According to that, right.

Q. Okay. Then I'll show you Exhibit -- what I've marked as Exhibit 6, which is Terry Watson's 2005 commission

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of Adam Alley. It's 12:43 p.m.

Q. Mr. Alley, we took a break. But, now, is it Luther Stuart, Luther L. Stuart, is that Butch?

A. Who I refer to as Butch, yes.

Q. Okay. And he had this route in 2003?

A. Right.

Q. In Bells, Tennessee?

A. Right.

Q. I'm going to show you what I've marked as Exhibit 4 and ask you if this is his commission statement for his route, Luther L. Stuart, in 2003. I hope it is.

A. (Reviewing document.)

Q. Do you recognize that document?

A. That's what it says. It says August of '03, Luther Stuart.

Q. Okay. What were his sales figures for this route in 2003?

A. Basically two hundred

statement.

A. Okay.

Q. And what is his sales -- is that correct? Is that his 2006?

A. Yeah, looks to be just like the rest of them. It's three hundred six thousand.

Q. Okay. So that's an increase, correct?

A. Right. The second one is an increase. First one was a decrease.

Q. The first one was a five thousand dollar decrease?

A. If that's what the math was, yeah.

Q. And the second one is about a fifty-six thousand or forty-six thousand dollar increase?

A. Okay.

Q. Is that correct?

A. If that's --

Q. Yes?

A. If the math is done right,

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that's right.

Q. All right. Then Terry, you said you didn't want him, told Joe Stewart you didn't want him, and he was reassigned, that is, he left your territory, correct?

A. He left.

Q. In 2006?

A. He left route eighteen three, right.

Q. Okay. And I'll show you what's been marked as Exhibit 5. And this is the commission for Terry Watson for the spring of 2006, and I believe that he was reassigned to take over a route in Montgomery or near Montgomery. But is that Mr. Watson's commission statement for 2006?

A. Same as the rest of them, that's what it says, yes.

Q. Okay. And what was his sales figures for 2006?

A. Two fifty-two.

point in there. His would be deliveries in 2003.

Q. So Terry may have actually collected more than -- or more than Luther in 2003, but there is a change in the reporting from that -- from those two years; is that correct?

MR. GERHARDT: Object to the form.

Q. We don't know what Luther's collected are in 2003, do we?

A. Well, this just says sales, it doesn't have that line, so they could have taken it out. I don't -- I'm not sure on how we were paid. This says -- just says sales were in 2004, it says sales and collected. It's making a difference.

Q. Okay. In 2005, what were Terry Watson's collected?

A. 2005, three hundred and two thousand.

Q. Okay. And in 2006 what was his collected sales?

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Q. Well, don't they get paid on collected?

A. Well, every number I read off was off the sales number. So all of them would be adjusted down, that's correct. But every one of them would be -- would go down.

Q. Okay. Just for record purposes, will you identify the document number and then the collected sales figures?

A. Okay. Make it by year, Document 7 was three fifty-three -- sorry, Document 7 was two hundred fifty-three.

Q. Is that Luther Stuart?

A. No, that was Terry Watson.

Q. Terry Watson for what?

A. That was for 2004.

Q. Okay. Can you go to Luther Stuart's sales, collected sales, in 2003?

A. At that time -- I think at that time we paid on deliveries, so his was actually deliveries. It changed some

A. A hundred and seventy-three thousand five hundred.

Q. That's a substantial decrease from 2005, correct?

A. Right. Now, on collections, just so you know, on collections of independents, that's the salesmen does the collecting. So it looks like the sales wasn't -- you know, what the final -- and this is a -- they are paid on ninety percent. So the difference there is probably outstanding independent money that it is the salesman's responsibility to collect.

Q. Now, I'm going to show you what has been marked as Exhibit 3, which is Leslie Branham's commissions for this eighteen oh three route for 2006. And what did he collect on that route in 2006?

A. Three hundred and seventy-eight thousand.

Q. Okay. And what did he receive in commissions? What are his commissions

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on that, eighty-seven?

A. His gross commission?

Q. Yes.

A. Eighty-two.

Q. Eighty-two. Okay. What are Terry Watson's commissions, gross commissions, in 2006?

A. Gross commission, twenty thousand eight hundred sixteen dollars.

Q. And is he actually upside-down for the year, that is, his draws exceeded his commissions?

A. At the time of this, it did.

Q. So based on these changes, Mr. Watson has been impacted negatively, correct?

MR. GERHARDT: Object to the form.

A. Well, you are not comparing apples to apples.

Q. Well, he made less money in 2006 than he did in 2005, correct?

A. So did any salesman that sold

recommended that he not be reassigned to your territory, correct?

A. Correct.

Q. Do you know how much or how the two routes compared, that is, Bells, Tennessee and the route he's on for the year 2005? Do you know how they compared, how much was sold on each route?

A. 2005, I know what was --

Q. Sold in Bells?

A. Bells. But, no, the other one, I don't.

Q. What was sold in Bells?

A. In 2005?

Q. Yes, collected. How much did he collect?

A. The year that Terry was there?

Q. Yeah.

A. 2005, three hundred two thousand.

Q. Okay. Do you know what was sold on the route he's on now for 2005 in 2005?

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less in one year than he did the other.

Q. Yes, sir. But this change wasn't voluntary, was it?

A. I have -- I don't know.

Q. You made the decision to send him to another territory, correct?

A. I think most of the change was -- let me see here.

MR. GERHARDT: His question was just whether you made the decision to change him to another territory.

A. Okay. Yes, I made that decision.

Q. You would agree with me that that decision cost Terry money, correct?

MR. GERHARDT: Object to the form.

A. I can't say that it did or didn't. That wasn't the only thing that cost him money, but it could have.

Q. Well, I know you didn't transfer him to Texas and assign him that route. I understand that. You just

A. No.

Q. Okay. Tell me, the route that Mr. Branham is working now, were there any changes to it from 2005 to 2006? Were any stores added or deleted?

A. Best of my knowledge -- let me think. Yeah, there was probably -- best of my knowledge, there was some -- some of both. Some taken away and some added to it. I don't remember --

Q. Well, is there some way that we can determine what stores were on the route in 2005 and what stores were on the route in 2006, sir?

A. I think so. I don't know how long they keep that information.

Q. Well, if you're a lawyer like me and you wanted that information, what would you ask for?

A. 2005. Home office may still have that. The store -- the customer list for that year, I don't know how long they keep them.

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Q. Would you ask for the customer list for route eighteen oh three for 2005, 2006, is that what you would ask for?

A. Right.

Q. Okay. Who would have that, who at Union Springs?

A. If it was available, Patty Walker would have it.

Q. Well, why wouldn't it be available? Don't y'all have computers down there?

MR. GERHARDT: Object to the form.

A. Sure. But information becomes irrelevant at some point in time.

Q. Do you know what your policy is about how long you retain information, sir?

A. No, no.

Q. Okay. Other than Joe Stewart, have you had any conversation with anybody at Bonnie Plant about the job performance of Terry Watson?

A. No.

Q. When did he leave, if you know?

A. He worked -- best of my knowledge, he worked with Terry part of both years. I know maybe part of the first year and the second year. Seems like he worked with Les. The first trip, Les kept him out a long time or whatever, he didn't work that year. And then I don't think he worked -- then he worked again last year a little bit, helped me out some last year, and I haven't seen him. He just -- haven't seen him this year at all.

Q. But is it fair to say that the decision to sever the relationship was his decision, that is, he wasn't fired?

A. Sure, no.

Q. It was a voluntary --

A. Right.

Q. -- quit or whatever?

A. Right.

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A. Not that I remember, no.

Q. Do you have to grow the plants at your station?

A. Yes.

Q. How many folks do you have that help you?

A. It varies, but anywhere from six or seven at the beginning of the season to fifteen or so as we get busier.

Q. And your route salesmen, do they have a helper or someone to assist them on their route?

A. Yes.

Q. Do you recall who Terry Watson's helper was on his route?

A. I do. It was Michael Roades.

Q. R-h-o-d-e-s?

A. A-d-e-s, I think.

Q. R-o-a-d-e-s?

A. E-s, I think that's how it's spelled.

Q. Okay. Is he still employed with the company?

Q. Okay. And were there any other people that worked with Terry other than Michael at your --

A. I'm sure that -- I'm pretty sure that first year, there probably was. Seems like he had two helpers maybe at one time. But, you know, that's -- really I do the paperwork and stuff for them. But that's -- they keep up with them as far as if they're satisfied, they keep them. And people come -- I mean, there is a lot of turnover there. People come for a job, but they don't really want to work sometimes.

Q. And y'all's trucks, the Bonnie Plant trucks, they have a GPS device in them, correct?

A. Some -- at the time I don't think -- I don't think they did during this time, but they do now.

Q. Okay. Well, today you know where the truck is and you know how many hours a day it is moving, correct?

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A. On the ones -- right.

Q. That have that system?

A. That have that system.

Q. Do you get any kind of report about the trucks, like --

A. No.

Q. Where does that information go, to the home office?

A. If they have one, yeah, as far as I know. I don't know where it goes. I have the capability I can pull up and look at them and see where they are on a map.

Q. On your computer?

A. On the computer.

Q. Okay. So if you need them, you know where they are?

A. Most of the time. There is places like self-service and everything else, places where they do work and places where they don't work.

Q. Like a phone?

A. Just like a cell phone. I mean, but --

or something so they can see it?

A. Right. Most of the time now it's cell phone. It used to be, I mean, primitively we used to have to call around the stores and leave messages for them.

Q. They don't have a laptop in their truck or anything?

A. They have a laptop now, but it's something new this year. They don't have Internet access all the time.

Q. Okay. Again, like a cell phone?

A. Yeah, that and it's -- I mean, it's something new, and they're figuring out.

Q. Okay. And then, I mean, I assume that there is times when you may need to contact them, correct?

A. Yes.

Q. And so you normally reach them by cell phone?

A. Cell phone.

Q. Okay. And can you -- what do

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Q. Have to have a satellite?

A. I don't understand that how you cannot have a satellite, but there is places that they don't.

Q. Okay. And when somebody is working under your supervision, how do you communicate with them, that is, do you have an office at a location?

A. Yes.

Q. Where is that office, sir?

A. It's at the plant farm in Bells, Tennessee.

Q. It's in Bells, your office?

A. Right.

Q. And that's where you normally report to work?

A. That's where I am, right.

Q. And how -- if they're out on the road, how do you communicate with them? Can you e-mail them?

A. I can now if they have e-mail, but they have to have access.

Q. They have to have a Blackberry

you do if somebody -- let's say they become ill and their wife becomes ill, are there occasions when you have to physically run a route for somebody?

A. Yes.

Q. I mean, that's part of your job too?

A. Right.

Q. I guess that's happened from time to time?

A. I has.

Q. I mean, a family emergency or something?

A. Right.

Q. Did you ever have to do that with Terry?

A. Not that I remember, no.

Q. Now, how long is the season, the spring season up in Tennessee, when do they stop?

A. Basically February to now we run to about the 4th of July.

Q. Okay. And during that period

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1 of time, would a salesman work seven days
2 a week, or how would they work?
3 A. It varied according to sales
4 whether it was seven days a week or two
5 days a week, according to -- according to
6 his sales volume.
7 Q. They make their own schedule?
8 A. Pretty much, right.
9 Q. I mean, they don't have normal
10 hour they're required to work or anything?
11 A. They're required to take care
12 of the stores, so that's their schedule.
13 I mean, if it takes two days a week or if
14 it takes seven days a week, whatever it
15 takes.
16 Q. I wouldn't imagine you have
17 any routes that work two days a week, do
18 you?
19 A. Well, only -- early on and
20 maybe late, you know.
21 Q. When you are winding up or
22 gearing up?
23 A. Right.

1 say they have to collect?
2 A. Right.
3 Q. Do they -- is there some
4 paperwork they have to do there and
5 physically get a check?
6 A. Right.
7 Q. How does that work?
8 A. The billing is handled from
9 the home office. It's the salesman's
10 responsibility to keep up with it and make
11 sure that they're paid on a timely manner.
12 And if they are not paying, you cut them
13 off from deliveries.
14 Q. You only extend credit for so
15 long?
16 A. So long.
17 Q. So how many days do you
18 normally extend credit?
19 A. Well, it's -- we don't have a
20 strict policy on that because it's sort of
21 according to the customer. We've had
22 customers for years that, you know, you
23 try to work with them. And then, of

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1 Q. Okay. But these like -- for
2 example, your customers include Home Depot
3 and Lowe's, correct, Wal-Mart?
4 A. Yes.
5 Q. So chain stores, correct?
6 A. Yes.
7 Q. And I'm going to say
8 high-volume stores for plants?
9 A. Right.
10 Q. Do you serve -- sell to
11 nurseries too?
12 A. Some.
13 Q. Would that be your
14 independents?
15 A. Independents would be anybody
16 from farm supply stores, cooperative
17 stores. I mean, we have some florists, we
18 have some -- anything you can imagine,
19 service station. I mean, most anybody
20 that wants to sell plants, we sell to a
21 wide variety of people.
22 Q. Okay. Now, when they go to an
23 independent, what you've described, you

1 course, you have some, the newer they are,
2 probably thirty days.
3 Q. Now, and physically, these
4 salesmen have to get these racks out of
5 their truck and set them up in the stores,
6 correct?
7 A. Right.
8 Q. I mean, they stock the stores,
9 they don't just drop -- pull their truck
10 up and the people in Home Depot --
11 A. Right, that's the difference
12 between if I come in, I guess we have
13 salesmen as opposed to delivery boys or
14 delivery people. They are actually seeing
15 what they need. It's not put on their
16 truck this store gets this sixty and you
17 roll it off the rack and leave. You get
18 out and look to see what is on the rack
19 and pick up what is there and see what
20 they have sold and what they haven't sold
21 and more popular things which vary from
22 one store to the other in the same town
23 and leave what they -- leave what they

22 (Pages 85 to 88)

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reason and come up with what they need and leave that.

Q. Do the salesmen get reports sent to them about what has sold?

A. They do now.

Q. Okay. That's not something they were doing in 2004 or '5?

A. No, it wasn't available to us then at that time.

Q. Okay. So when the store scans it, there is no information provided to y'all?

A. It is now.

Q. Okay.

A. In the beginning, we came up with pay by scan, and it was -- it's so much like everything else when compared to electronics to 2004. It's so much more refined now than it was then. At that time we got a report I think it was weekly. And now you have daily reports, and you have a lot more information available today.

two hundred different numbers and that overloads their system. So they give you six or seven numbers, ten numbers that you can use. So each container size has a number. So you look up there and see they sold -- you have volume.

Q. You know they sold how many vegetables maybe and then how many plants?

A. How many five-inch cups, four-inch cups, whatever.

Q. Okay. So they really have to go to the stores and see what they need?

A. Right.

Q. And that makes it I assume harder to know what to take --

A. Right.

Q. -- to the stores, right?

A. Right.

Q. So they may have to go twice a week, whatever?

A. High volume stores, you're going every other day. Every day on the weekend. Every -- or whatever. But you

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Q. And so that's one of the reasons for the computers in the trucks, is to provide that information to the salesmen?

A. Yes.

Q. That is they're linked in some way to your network so that they can get this information, help them stock the stores and keep the inventory?

A. To some extent. It still only tells you volume. It doesn't tell you specific items. Specific -- it tells you containers. It doesn't tell you specific varieties and that type thing.

Q. It doesn't break it down into like we need more marigolds or anything like that?

A. No. Because the containers are -- the bar codes, they scan -- the SKU numbers and bar codes are a container because the stores won't give you -- I mean, we would have to have just for vegetables a hundred, hundred and fifty,

are going -- the volume of the store, it would be anywhere from one time to five times a week probably.

Q. And that's something that's important, these high-volume stores, I assume y'all sell most of your plants on the weekend; is that correct?

A. Most of the time, yes.

Q. That is, people like me who work during the week, they are going to go to the store on the weekend and get something to work in their yard?

A. Right.

Q. And then so you may have to go a couple times on Friday and on Sunday or on Saturday and Sunday, right?

A. Right, sure.

Q. And so it's important that your salesmen work on the weekend and they can slow down during the week, would that be a fair statement?

MR. GERHARDT: Object to the form.

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A. No. When you are -- I mean, you sell -- you know, there is times that stores sell through the week just as well as they do on the weekend.

Q. Now, so y'all are constantly refining your system, information systems, correct?

A. That's what they say.

Q. Okay. Well, do you feel like it's gotten more helpful as the years -- over the years?

A. It has.

Q. Okay. And you got Tony Brown who is over age sixty and he's working under your supervision, right?

A. Correct.

Q. Is he doing a good job?

A. He does.

Q. You can do this job even at an advanced relatively speaking age, correct?

A. Correct.

Q. Now, you're telling me, as I understand it, that you made the decision

CERTIFICATE

STATE OF ALABAMA)
JEFFERSON COUNTY)

I hereby certify that the above and foregoing deposition was taken down by me in stenotypy, and the questions and answers thereto were reduced to typewriting under my supervision, and that the foregoing represents a true and correct transcript of the deposition given by said witness upon said hearing.

I further certify that I am neither of counsel nor of kin to the parties to the action, nor am I in anywise interested in the result of said cause.

COMMISSIONER - NOTARY PUBLIC
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you didn't want Terry back as a salesman was based strictly on his job performance for you, correct?

A. Correct.

Q. It had nothing to do with his health problems? I mean, you didn't know the status of his health, correct?

A. Correct.

Q. Okay. I just want to -- because, I mean, he had surgery that fall. But that wasn't the reason that you said you didn't want him back, correct?

A. That was not the reason, right.

MR. ROBERSON: Okay. Well, I think I'm through, Graham. Have you got any questions?

MR. GERHARDT: I don't have any.

MR. ROBERSON: We'll go off the record. It's 1:12, and we'll go off the record at this time.

FURTHER THE DEPONENT SAITH NOT

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PLAINTIFF ARTHUR WATSON'S
EVIDENTIARY SUBMISSIONS
EXHIBIT 5

In The Matter Of:

ARTHUR T. WATSON

v.

ALABAMA FARMERS COOPERATIVE, INC., ET AL.

NO. 2:07-CV-520-WHA

TATE GATLIN
April 22, 2008



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ARTHUR T. WATSON
ALABAMA FARMERS COOPERATIVE, INC., ET AL.

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IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CIVIL ACTION NO. 2:07-CV-520-WHA

ARTHUR T. WATSON,
Plaintiff,

vs.

ALABAMA FARMERS COOPERATIVE, INC.,
D/B/A BONNIE PLANT FARMS,
Defendants.

VIDEO DEPOSITION
OF
TATE GATLIN
April 22, 2008

REPORTED BY: Eleanor S. Pickett
Certified Shorthand Reporter
and Notary Public

A P P E A R A N C E S

FOR THE PLAINTIFF:

Mr. Jerry D. Roberson
Attorney at Law
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P.O. Box 380487
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FOR THE DEFENDANT:

Mr. Graham Gerhardt
Attorney at Law
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S T I P U L A T I O N

IT IS STIPULATED AND AGREED,
by and between the parties, through their
respective counsel, that the video
deposition of TATE GATLIN may be taken
before Eleanor S. Pickett, Commissioner,
Certified Shorthand Reporter and Notary
Public;

That the signature to and
reading of the deposition by the witness
is waived, the deposition to have the same
force and effect as if full compliance had
been had with all laws and rules of Court
relating to the taking of depositions;

That it shall not be necessary
for any objections to be made by counsel
to any questions, except as to form or
leading questions, and that counsel for
the parties may make objections and assign
grounds at the time of trial, or at the
time said deposition is offered in
evidence, or prior thereto.

I, Eleanor S. Pickett, a
Certified Shorthand Reporter of
Birmingham, Alabama, and a Notary Public
for the State of Alabama at Large, acting
as Commissioner, certify that on this
date, as provided by the Federal Rules of
Civil Procedure of the United States
District Court, and the foregoing
stipulation of counsel, there came before
me at the law offices of Burr & Forman
LLP, 3400 Wachovia Tower, Birmingham,
Alabama, on April 22, 2007, commencing at
11:35 a.m., TATE GATLIN, witness in the
above cause, for oral examination,
whereupon the following proceedings were
had:

(Whereupon, Plaintiff's
Exhibits 1 - 3 were marked for
identification.)

MR. ROBERSON: All right.

This is the videotape deposition of Tate
Gatlin. It's being taken on April 22nd,

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2008 at the law offices of Burr & Forman in Birmingham, Alabama. This case is pending in the United States District Court for the Middle District of Alabama, Northern Division. It's styled Arthur T. Watson, Terry Watson, versus Alabama Farmers Cooperative, Inc., doing business as Bonnie Plant Farms, defendant. It's CV 07-520. I'm Jerry Roberson. I represent the plaintiff, Terry Watson. And I'm also running the video camera. I would ask all counsel of record to state their name and the party that they represent.

MR. GERHARDT: I'm Graham Gerhardt with Burr & Forman here on behalf of the defendant. Okay.

TATE GATLIN,
having been first duly sworn, was examined and testified as follows:

THE REPORTER: Usual stipulations?

A. Okay.
Q. So if you answer it, I'm going to assume you understood it. Fair enough?

A. Fair enough.
Q. And I apologize, I have a cold today. So if you can't understand me or if I'm not communicating with you, if you will let me know, I'll try to talk louder, all right?

A. Okay.
Q. Now, would you tell me where you reside, what your -- the street address is of your home?

A. It's 681 County Road 205, Jack, Alabama.

Q. Jack, Alabama?

A. That's correct.

Q. Can you tell me where that's located?

A. It's about twenty miles southeast of Troy, Alabama.

Q. Okay. So is your office where you report to work, is that in Union

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MR. GERHARDT: Yes, ma'am.

MR. ROBERSON: Yes.

EXAMINATION BY MR. ROBERSON:

Q. Mr. Gatlin, my name is Jerry Roberson. I represent Terry Watson in this case. Have you ever given a deposition before?

A. Yes, sir.

Q. How many times?

A. Numerous. I don't know particular numbers.

Q. Okay. So you know the rules today in that you have to answer out loud audibly to my questions.

A. Yes, sir.

Q. Don't nod your head or say uh-huh or huh-uh like we would do in normal conversation. Fair enough?

A. Fair enough.

Q. And if I ask you a question that you don't understand, please let me know you don't understand, okay?

Springs, Alabama?

A. Yes, sir, that is correct.

Q. How far is your home from Union Springs?

A. It's fifty-four miles.

Q. Okay. Do you commute each day?

A. Yes, sir.

Q. Okay. And are you married?

A. No, sir.

Q. How old are you, Tate?

A. I'm thirty-six.

Q. How long have you worked for Bonnie Plant Farms?

A. For -- since 2003.

Q. Okay. So --

A. Going on five years.

Q. Coming up on five years?

A. Yes, sir.

Q. Would you tell me what your job title is or job classification?

A. I'm the safety director.

Q. For Bonnie Plant, the

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entire --

A. For Bonnie Plant Farm.

Q. And just for those of us who are not in the plant business, what does that mean, you're the safety director? All the drivers report to you?

A. I am responsible for dealing with compliance with OSHA, EPA, DOT and also handle insurance claims and stuff of that nature for our company, reduce risk.

Q. Okay. Well, Terry Watson is a salesperson, a plant salesman. You understand that?

A. Yes, sir.

Q. Okay. And all the people -- how many -- do you know about how many plant salesmen they have? Several hundred?

A. Several hundred, yes.

Q. Okay. And all of them, I understand, drive a truck to deliver the plants; is that correct?

A. Yes, sir.

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Q. So they have to have a motor vehicle license, correct?

A. Yes, sir.

Q. And part of your job as the safety director is to make sure that -- I may have just unplugged my video camera.

Part of your job is to make sure that they all are qualified to operate this truck, correct?

A. That's correct.

Q. They don't have to have a CDL. It's only a six-wheel truck, right?

A. That's correct, but it's judged by the GVW, gross vehicle weight, yes.

Q. Okay. Well, how much do these trucks weigh?

A. They're GVW'd at twenty-five thousand nine hundred ninety-five pounds.

Q. Okay. Now, if you were an over-the-road truck driver, then you would have to have a CDL, correct?

A. If you're operating a vehicle

over twenty-six thousand one pound or above or greater, you would have to have a CDL, yes, sir.

Q. Okay. And so in order -- in order to operate these vehicles for Bonnie Plant, do the people have to have, the truck drivers or the plant salesmen, do they have to have some medical certification?

A. Yes, sir, they do.

Q. What is that called? What is that known as?

A. DOT physical.

Q. Okay. They have to have a DOT physical every two years?

A. Depending on the physician's request. Other conditions require fewer or less years.

Q. Okay. All right. And Terry Watson is a truck driver, so he has to have a DOT physical, correct?

A. That is correct.

Q. Now, the helpers, the people

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that assist the plant salesmen, if they want to operate the vehicle or if the salesman wants them to be able to operate the vehicle, do they have to comply with these same rules?

A. Yes, sir, they do.

Q. So they have to be certified and have a motor vehicle license, correct?

A. That's correct.

Q. All right. And then all that has to be reported on your insurance, correct? In order to have insurance coverage when they're operating it, they have to be a listed driver, correct?

A. The insurance -- vehicles are insured, yes, which covers our people. Our people are insured.

Q. Okay. But don't you have to submit some kind of list to them?

A. No, sir, we do not submit a particular list of all our drivers with them.

Q. Oh, you don't?

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A. No, sir.

Q. Do you just list your vehicles?

A. Yes, sir.

Q. You have a list of vehicles?

A. It's a fleet policy, that's correct.

Q. Okay. And you identify the vehicles by their VIN number, correct?

A. Yes, sir, that's correct.

Q. And if you add or remove vehicles, you delete them or add them to your list, correct?

A. That is correct, sir.

Q. But you're telling me, as I understand -- who is your insurance carrier for your vehicles?

A. Nationwide Agri Business.

Q. You're telling me that you don't have to report who your operators of those vehicles are and they don't have to have their license information and their DOT certification?

documents regarding Terry Watson. You're aware of that?

A. Uh-huh.

Q. Is that a yes?

A. Yes, sir, I'm sorry.

Q. That's all right. I'll try to remind you. I'm not doing that to annoy you, just to make the record clear.

A. That's fine.

Q. All right. Exhibit 1 is the deposition notice. And y'all have in response, Bonnie Plant has, in response to that notice produced two documents which I've marked as Exhibits 2 and 3; is that correct?

A. Yes, sir, that is correct.

Q. Okay. Now, would you hand me back Exhibit 1?

A. Surely.

Q. I asked for all documents which relate to the decision not to reassign Terry Watson to the Bells, Tennessee route beginning in the spring

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A. No, sir, we do not submit that to them.

Q. Okay. Who is y'all's agent?

A. Arthur J. Gallagher.

Q. Is he in Union Springs?

A. Arthur J. Gallagher, no, sir. They are out of Nashville, Tennessee.

Q. Okay. Now, Terry, do you know how long Terry Watson has been employed as a plant salesman for Bonnie Plant?

A. I have no idea.

Q. Do you know how old he is?

A. I don't have any idea, no, sir.

Q. Well, let me show you what I've marked as Plaintiff's Exhibit 1, and this is the deposition notice I sent to the attorney for Bonnie Plant, Mr. Gerhardt. Have you seen that document before today?

A. Have I seen it, yes, sir.

Q. Okay. And I asked at this deposition that Bonnie Plant produce some

season of 2006. This request includes correspondence, medical records, or correspondence from any physician about the state of Mr. Watson's health or any inquiry into his health by this defendant. So as the medical -- as the safety director, are you allowed to communicate with physicians about the employees that you supervise?

A. Sure.

Q. You have to, don't you?

A. To some extent, yes.

Q. Yeah. If you get some -- if somebody is having some type of procedure done and they may have some restrictions for a while, you have to know whether they can drive a truck, correct?

A. Sure, if we're notified of it.

Q. You have to know about their state of health and any restrictions that they have, correct?

A. Yes.

Q. Okay. All right. And you

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have produced or Bonnie Plant has produced two documents. Now, would you tell me what Exhibit 2 is? It's a one-page document, and it says from Wellness Group, Inc., to Tate something on-line. Watson's screening results today. It's dated January 4th, 2006. Can you tell me what that is?

A. That is an e-mail from Mark Mashburn which is a physical therapist.

Q. Where is he?

A. Where is he?

Q. Where is he located?

A. Out of Dothan, Alabama.

Q. Okay. And did he examine Terry Watson?

A. He performed a fitness for duty testing on all of our employees.

Q. Okay. And is that done in Dothan, or where is that done?

A. That is actually done at our sales meeting.

Q. Your annual sales meeting?

Q. Okay. Well, the e-mail is dated January 4th, '06.

A. Yes, sir.

Q. I don't know when the examination took place.

A. Yes, sir, it took place at our sales meeting.

Q. Okay. So the meeting would have been back earlier is what you're saying?

A. Yes, sir, end of November, first of December.

Q. Okay. And Terry had had a total knee replacement in July of '05, correct?

A. According to that, yes, sir.

Q. All right. And this says he is fine to drive, get in and out of truck, maybe help carry items, plants, at waist to knuckle level and to shoulder level but not overhead. Okay. Do you see that in that document about the middle of the page?

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A. Yes, sir.

Q. Okay. Do you know where that was in January of '06?

A. I believe it was probably in Auburn, Alabama, if I'm -- if I recall correctly.

Q. Okay. And what was the results of his testing in January of '06?

A. It says his screening was limited to his report and the restrictions do not -- do I need to read this whole thing, sir?

Q. No, hand it to me.

A. (Witness complies.)

Q. All right. This examination was conducted in January of '06, correct? That's when your annual meeting was?

A. If it was in January. Sometimes it's in usually November or December.

Q. Okay.

A. And then I get the report back in January.

A. Yes, I do.

Q. Okay. Then we have Plaintiff's Exhibit 3 which is an attending physician statement from Mr. Watson's neck doctor, Dr. Burkus, at the Hughston Clinic in Columbus, Georgia, which indicates that he has no restrictions as of January of '06, correct?

A. Yes, sir.

Q. Okay. So based on those two documents, did you believe that Terry Watson was fit for duty as a plant salesman truck driver for Bonnie Plant Farms?

MR. GERHARDT: Object to the form.

Q. You can answer.

A. With some additional help, yes.

Q. Okay. As long as he had somebody to help him, assist him, with loading and unloading the plants, correct?

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A. I felt, yes.

Q. Okay. And did you advise Joe Stewart of that?

A. Of?

Q. Terry's fitness for duty.

A. Yes.

Q. Is there a writing where you said he was fit for duty?

A. No.

Q. Okay. Do you -- where is Mr. Stewart's office in relation to yours at the Union Springs headquarters?

A. It's in a separate building across the way.

Q. Okay. So how did you contact him? Was it by phone, or did you go stop by and see him?

A. Don't recall particulars, but probably talked to Joe at some point in time when he was in the office.

Q. Do you maintain a file on each employee, truck driver employee?

A. We have a driver files on

A. Annually.

Q. And does that become part of the file?

A. Yes, sir.

Q. And just for our jury, what is an MVR?

A. Motor vehicle record which is a review of a person's driving history for -- we look at the past three years is what we look at.

Q. So if they have had a moving violation, a ticket, it will be on the MVR if they paid it, correct?

A. It should appear on the MVR.

Q. Okay. And do you have to periodically review the MVRs with the employees and let them know if they're doing something wrong?

A. Yes, sir. We do if they're in danger of not being able to drive due to our policy, then we notify them of where they're at.

Q. Okay. Now, would there be

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those individuals, yes, sir, we have to.

Q. Okay. Is that on OSHA requirement?

A. No, sir, it's DOT.

Q. DOT?

A. Yes, sir.

Q. And what kind of information do you keep in a DOT file for each employee, their card, their physical card?

A. Medical card has to be kept there, a copy of the driver's license we keep, a copy of the person's application, the previous three-years prior history of employment history, drug screen results.

Q. Are these drivers subject to random drug tests?

A. Yes, sir.

Q. Okay. Are they also subject -- do you have to periodically run an MVR on each of them?

A. Yes, sir.

Q. How often do you have to do that?

anything in Terry Watson's file that would tell us when you spoke with Joe Stewart or what you said with respect to Terry Watson's clearance to drive and fitness for duty in January of '06?

A. No, sir.

Q. So all that's just oral; is that correct?

A. Yes, sir.

Q. Okay. Do you know when the spring season began in Bells, Tennessee?

A. No, sir.

Q. And as I understand it, you clear somebody to drive, but you don't have anything to do with the decision of where they're assigned to work; is that a fair statement?

A. That's a fair statement, yes, sir.

Q. Okay. In other words, you clear them and they can work any route that they're designated for, correct?

A. That is correct, sir.

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Q. Okay. And have you ever had any restrictions other than this period after Terry's surgeries in -- after the '05 season, have you ever had any restrictions on Terry Watson's ability to work as a plant salesman?

MR. GERHARDT: Object to the form.

Q. You can answer. Have you ever placed him on any kind of he can't work as a salesman for a period of time?

A. No, sir. I don't have anything to do with that, no.

Q. Okay. Well, you issue the medical clearance. So he's always been cleared to drive for y'all; is that correct?

MR. GERHARDT: Object to the form.

Q. Up until 2005 until he had his surgery, he's always been approved to operate a motor vehicle, correct?

A. For my period of time as being

it's only for the new hires?

A. That's correct. Now it's presently done for new hires. After we got the employees that were employed with us after we started the program, we had to get them in first at a point in time and then now it's done for all the new people.

Q. And Mr. Mashburn isn't a doctor a physician, he's a physical therapist, correct?

A. That is correct.

Q. All right. And so he -- have you ever sat in on this evaluation for any person? Do you know what it consists of?

A. I am aware of what it consists of.

Q. I mean, are they required to move objects, lift and bend, pull and stoop, those kind of things, the functions of what you do as a driver?

A. Yes, sir, basically.

Q. Okay. And that's --

A. The gist of the job

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safety director that I have knowledge of, sir.

Q. Okay. That's -- I apologize, yeah. Since 2003 since you've been the safety director, he's always been approved to drive, correct?

A. Yes, sir, that I'm aware of.

Q. He has appropriate medical clearances to drive and operate a motor vehicle?

A. Yes, sir, that I'm aware of.

Q. Is this examination that's done by -- and you told me his name, Mark, what is Mark's last name?

A. Mashburn.

Q. That's done for all employees every year?

A. We try and get new employees as they come in. We had to go back and do people that were currently employed at the time.

Q. Okay. All right. So this isn't done every year on an annual basis,

assignments, job duties, is performed in that short period of time.

Q. Okay. Now, did Terry ever have any additional examination by Mr. Mashburn after the one that's reported here in Exhibit 2?

A. Not that I'm aware of.

Q. Okay. All right. And other -- other than this one record from the Hughston Clinic that y'all have marked -- that I've marked as Exhibit 3, do you have any other additional information from his physicians about his restrictions?

A. No, sir.

Q. And did you seek any, that is, did you try to obtain any information from any of his physicians?

A. No, sir.

Q. Mr. Watson actually brought you Exhibit 3, isn't that correct?

A. Yes, sir.

MR. ROBERSON: Okay. All

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right. I hate to say it but I think I'm
through.

MR. GERHARDT: Good enough.

MR. ROBERSON: Have you got
any questions?

MR. GERHARDT: I don't.

MR. ROBERSON: Okay. That
will conclude the deposition of Tate
Gatlin at 11:55. We are off the record.

FURTHER THE DEPONENT SAITH NOT

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CERTIFICATE

STATE OF ALABAMA)
JEFFERSON COUNTY)

I hereby certify that the
above and foregoing deposition was taken
down by me in stenotypy, and the questions
and answers thereto were reduced to
typewriting under my supervision, and that
the foregoing represents a true and
correct transcript of the deposition given
by said witness upon said hearing.

I further certify that I am
neither of counsel nor of kin to the
parties to the action, nor am I in anywise
interested in the result of said cause.

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PLAINTIFF ARTHUR WATSON'S
EVIDENTIARY SUBMISSIONS
EXHIBIT 6

In The Matter Of:

ARTHUR T. WATSON

v.

ALABAMA FARMERS COOPERATIVE, INC., ET AL.

NO. 2:07-CV-520-WHA

JOSEPH PADGETT

May 8, 2008



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ALABAMA FARMERS COOPERATIVE, INC., ET AL.

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May 8, 2008

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IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CIVIL ACTION NO. 2:07-CV-520-WHA

ARTHUR T. WATSON,
Plaintiff,

vs.

ALABAMA FARMERS COOPERATIVE, INC.,
D/B/A BONNIE PLANT FARMS,
Defendants.

VIDEO DEPOSITION
OF
JOSEPH PADGETT
May 8, 2008

REPORTED BY: Eleanor S. Pickett
Certified Shorthand Reporter
and Notary Public

A P P E A R A N C E S

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Birmingham, Alabama 35203

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S T I P U L A T I O N

IT IS STIPULATED AND AGREED,
by and between the parties, through their
respective counsel, that the video
deposition of JOSEPH PADGETT may be taken
before Eleanor S. Pickett, Commissioner,
Certified Shorthand Reporter and Notary
Public;

That the signature to and
reading of the deposition by the witness
is waived, the deposition to have the same
force and effect as if full compliance had
been had with all laws and rules of Court
relating to the taking of depositions;

That it shall not be necessary
for any objections to be made by counsel
to any questions, except as to form or
leading questions, and that counsel for
the parties may make objections and assign
grounds at the time of trial, or at the
time said deposition is offered in
evidence, or prior thereto.

I, Eleanor S. Pickett, a
Certified Shorthand Reporter of
Birmingham, Alabama, and a Notary Public
for the State of Alabama at Large, acting
as Commissioner, certify that on this
date, as provided by the Federal Rules of
Civil Procedure of the United States
District Court, and the foregoing
stipulation of counsel, there came before
me at the law offices of Burr & Forman
LLP, 3400 Wachovia Tower, Birmingham,
Alabama, on May 8, 2008, commencing at
12:35 p.m., JOSEPH PADGETT, witness in the
above cause, for oral examination,
whereupon the following proceedings were
had:

MR. ROBERSON: This is the
videotape deposition of Joey Padgett.
It's May 8th, 2008 and 12:35 p.m. My name
is Jerry Roberson. I'm the attorney for
the plaintiff, Arthur Watson. This case
is pending in the United States District

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Court For the Northern District of
Alabama, Northern Division; and it's
styled Arthur T. Watson, plaintiff, versus
Alabama Farmers Cooperative, Inc., doing
business as Bonnie Plant Farms, defendant.

I would ask all counsel of
record to state their name and the party
they represent.

MR. GERHARDT: My name is
Graham Gerhardt. I'm with Burr & Forman,
appearing on behalf of the defendant.

MR. ROBERSON: Would you swear
our witness, please, ma'am?

JOSEPH PADGETT,
having been first duly sworn, was examined
and testified as follows:

THE REPORTER: Usual
stipulations?

MR. GERHARDT: Yes, ma'am.

MR. ROBERSON: Yes.

A. Fair enough.

Q. And if you answer, I'm going
to have to assume that you understood what
I was asking. So that's why I give you
that warning. Fair enough?

A. Fair enough.

Q. Okay. Now, what is your age,
sir?

A. Forty-six.

Q. And you are Joey Padgett,
correct?

A. That's correct.

Q. Where do you live now, Mr.
Padgett?

A. In Sonora, Kentucky.

Q. Okay. And where is that, sir?

A. In the middle of nowhere.
Twenty miles south or fifteen miles south
of Elizabethtown.

Q. Have you recently moved up
there?

A. Yes. Yes, I have.

Q. When did you move?

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EXAMINATION BY MR. ROBERSON:

Q. Mr. Padgett, my name is Jerry
Roberson. I represent Terry Watson in
this case.

Have you ever given a
deposition before?

A. Yes.

Q. All right. So how many times?

A. Twice.

Q. And were those cases involving
personal matters as opposed to some
business of Bonnie Plant Farms?

A. Yes.

Q. Okay. So today just, so you
know, I'm going to be asking you
questions. I need you to answer out loud
audibly; that is, if you respond, don't
nod your head or say uh-huh or huh-uh,
okay?

A. Yes.

Q. And if you don't understand my
question, tell me you don't understand and
I'll try to rephrase it. Fair enough?

A. In January.

Q. Of 2008?

A. Correct.

Q. Where did you live before you
lived in Kentucky, sir?

A. In Jasper, Alabama.

Q. All right. And how long did
you live in Jasper?

A. Moved there in '95.

Q. So you lived there for about
twelve or thirteen years?

A. Yes.

Q. And the whole time that you
lived there, sir, did you work for Bonnie
Plant Farms?

A. Yes.

Q. All right. When did you begin

--

A. No, I'm sorry, did not.

Q. Okay. When did you begin your
employment with Bonnie Plant?

A. In '96.

Q. In Jasper?

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A. Yes.

Q. What -- in what capacity were you first employed with Bonnie Plant?

A. A salesman.

Q. A route salesman?

A. That's correct.

Q. Okay. And did you have a geographical territory?

A. Yes.

Q. Where was that located?

A. North Alabama and North Mississippi.

Q. And did you report to a district manager or some sales supervisor?

A. Yes.

Q. What do y'all call that position?

A. My manager --

Q. Station manager?

A. No, I didn't report to a station manager. I just reported to the office out of Union Springs.

Q. Okay. How many routes are

Q. Okay. How many days a week do you -- does it take you to run your route?

A. That varies.

Q. Okay. Well, give me a range, if you can.

A. Well, it could take two days during parts of the year, and it could take three to four days during other parts of the year.

Q. So there are some days even during your busiest times when you are in an office or a station; is that correct?

A. Yeah. I was never there every day in a station. I was on my truck somewhere every day.

Q. Okay. All right. Well --

A. Maybe I misunderstood your question. I thought maybe you were meaning just a route in general with Bonnie Plant Farm.

Q. Well, I apologize. My question may not have been clear.

But it sounds to me like you do

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there -- if you know, how many routes are there in Alabama?

A. Don't know.

Q. Okay. How long did you work as a salesman for Bonnie Plant?

A. Through 2007.

Q. Okay. And then -- as a salesperson?

A. That's correct.

Q. And then in 2007 you got promoted to what?

A. Well, I've been a salesman the whole time until this year, and I've been a station manager since '99.

Q. Okay. So you do both jobs, that is --

A. Yes.

Q. -- you have your own route, correct?

A. That's correct.

Q. But you also supervise other salesmen as a station manager?

A. That's correct.

two functions; that is, you run your own route as a salesman, correct?

A. That's correct.

Q. But you also supervise other salesmen who report to you --

A. That's correct.

Q. -- correct? Is there a station for North Alabama?

A. There are two.

Q. Okay. Where is the one that you supervise?

A. Jasper, Alabama.

Q. Okay. Where is the other one in North Alabama?

A. Athens. Athens.

Q. Okay. Now, how many other salesmen for Bonnie Plant report to you in Jasper?

A. Two.

MR. GERHARDT: Jerry, let me interrupt you for a second. I just want to make it clear that that's not -- he's not currently in Alabama.

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MR. ROBERSON: I do understand
that.

MR. GERHARDT: Okay.

Q. I apologize.

A. That's all right.

Q. Up until you just moved to
Kentucky, two other salesmen reported to
you?

A. Correct.

Q. Okay. And for 2006 that is
when Terry Watson worked under your
supervision; is that correct?

A. In spring of 2006.

Q. Okay. That's why I'm taking
your deposition is because he did work for
you, okay?

A. (Witness nods head
affirmatively.)

Q. Is that a yes?

A. Correct.

Q. Okay. But I understood that
he only worked for you for part of a
season, the spring season in 2006,

A. It was seven five zero two.

Q. Okay. And how many stores
were on that route, approximately?

A. Approximately, forty.

Q. And can you tell me some of
the cities that that route served?

A. Columbus, Mississippi; Amory,
Mississippi; Winfield, Alabama. I can
tell you a bunch of them if you want.
Fayette, Alabama; Haleyville, Alabama.

Q. That's where I'm from, sir.

A. Is that right?

Q. Uh-huh.

A. Sulligent, Vernon, Millport,
Iuka, Mississippi; Golden, Mississippi;
and numerous others.

Q. Okay. Well, it sounds to me
like, and I'm -- don't let me put words in
your mouth, but it sounds to me like there
would be numerous smaller stores on that
route because this isn't -- you hadn't
identified any what I would call major
metropolitan area, correct?

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correct?

A. Yes. Yes.

Q. Okay. Now, he replaced a
salesman, correct?

A. Yes.

Q. Who was that?

A. Thomas Heath, H-e-a-t-h.

Q. Did Mr. Heath change
locations, or did he sever his
relationship with Bonnie Plant?

A. Relationship was severed with
Bonnie Plants.

Q. Okay. Involuntarily on his
part?

A. Voluntarily on his part.

Q. Okay. So he resigned; is that
correct?

A. That's correct.

Q. Okay. Do you know where he is
or what he's doing now?

A. No, sir.

Q. Okay. Did that route have a
number, or how did you refer to it?

MR. GERHARDT: Object to the
form.

A. I had several real good
accounts over there.

Q. Okay. You can have a good
account in a small town?

A. Yeah.

Q. Sure. But what I'm saying is,
you didn't -- you didn't have any large
cities that were served on that route. Is
that fair?

A. I would say the Columbus area
was more populated than any of the rest of
it, yeah.

Q. Okay. Well, I'm from
Haleyville, and there ain't five thousand
people in Haleyville.

A. A lot of big gardeners.

Q. Well, what store did you have,
Wal-Mart?

A. We had the Wal-Mart and
Winston County Co-op.

Q. Okay. And would that pretty

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much be you would -- if this -- if these cities had a Wal-Mart, then that would be on the route? And then if they had a farmers co-op, that would be on the route?

A. (Witness nods head affirmatively.)

Q. And possibly if they had some other independent smaller store, they could be serviced too?

A. That's correct.

Q. Okay. I mean, I'm just trying to get the lay of the land.

Okay. Now, how long did Mr. Heath work there as a route salesman for you?

A. (No response.)

Q. Did he work in the spring of 2005?

A. Yes.

Q. So he worked that same route?

A. That's correct.

Q. The whole year?

A. The whole year. I would say

Q. I still got to take the deposition of Joe Stewart.

A. Uh-huh.

Q. Would he have access to those records?

A. I'm sure he would.

Q. Okay. In fact, is he your boss or somebody that you reported to?

A. In a roundabout way, but not directly, no.

Q. Who was your direct supervisor?

A. Dennis Thomas.

Q. And what's his position?

A. President of Bonnie Plant Farm, general manager.

Q. Is he in Union Springs?

A. Yes, sir.

Q. Now, has any of that changed since you've gone to Kentucky this year?

A. Not really, no.

Q. Okay. You still report to him?

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he worked two to three years --

Q. All right.

A. -- prior to -- prior to that year.

Q. Do you or does Bonnie Plant keep a file, a personnel file, on every salesman?

A. I don't personally, no.

Q. Okay. But there are records that show how long he worked there?

A. Sure.

Q. And would also show his commissions, his sales?

A. That would be correct.

Q. Okay. Do you know where those are located or how I could obtain those?

A. In Union Springs, Alabama.

Q. Okay. Under whose control are they?

A. That, I wouldn't know.

It's -- I mean, we could just call the office and ask for whatever, you know.

What exact person, I wouldn't know.

A. That's correct.

Q. Okay. And how many folks are you supervising now?

A. In the neighborhood of forty-eight.

Q. Okay. How many of them are route salesmen?

A. Nine.

Q. I hope they gave you a raise.

A. I hope to earn one.

Q. Okay. Do you still run a route --

A. No.

Q. -- in Kentucky? It's just a supervisory position now?

A. That's correct.

Q. Okay. But a station manager has to supervise people who actually grow the plants too, correct?

A. He's also a grower.

Q. That's right.

A. He is the grower.

Q. Okay. So he has to provide

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the plants to be sold, is that a fair statement?

A. Correct.

Q. All right. And -- well, I want to talk to you about the time that you supervised Terry Watson, okay? Did you know him before he came to your supervision?

A. No.

Q. Okay. Had -- who made the decision to send Terry to Jasper?

MR. GERHARDT: Object to the form.

Q. You can answer.

A. I called Union Springs and told them that my route man had quit, that I needed somebody.

Q. Okay. Who did you talk to?

A. Kyle Currington. A couple three days later Kyle called and said he could send Terry Watson.

Q. Okay. Did you ever talk to Joe Stewart about Terry?

Q. Okay. Was that true that his truck had broken down?

A. Yeah.

Q. Okay.

A. Yeah.

Q. So you went physically and got him, to Hattiesburg, Mississippi?

A. Yes, sir.

Q. Okay. And he worked for you from what date; starting what date, if you know?

A. Sometime the week after Good Friday of '06 until we finished out the year.

Q. Okay. When is Good Friday?

A. Changes every year.

Q. I know. What month does it occur in?

A. Either March or April.

Q. Okay. The end of March or the beginning of April; is that correct?

A. It would fall somewhere in that range.

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A. No, don't think I did, not that I recall.

Q. Then Terry arrived at your location?

A. No, sir.

Q. Okay. What happened?

A. I had to go and get him.

Q. Where did you go?

A. Hattiesburg, Mississippi.

Q. Okay. When you say "you had to go get him," sounds like he wasn't coming.

A. No, he was in a motel room there for about a week and couldn't seem to get any further. So I went --

Q. He didn't have transportation? I don't know what you are telling me.

A. He was in a truck, and he said his truck broke down.

Q. Oh.

A. And instead of getting a bus or something to get on up there to go to work, he just stayed there.

Q. Okay. We'll I'm just trying --

A. That particular year, I really can't say without a calendar in front of me when it was.

Q. Okay. Well, I'm just trying to ascertain when he was physically in Jasper.

A. Okay.

Q. So sometime at the end of March of '06?

A. Right. Or the first of April.

Q. And he worked -- what do y'all consider the spring season, until what date, July or sometime?

A. Sometime around the 4th of July.

Q. Okay. And when does your spring season start in Jasper; that is, when do the route salesmen begin their routes?

A. I have started as early as December.

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Q. When did you start in 2006?

A. It would be safe to say the first week or so of January.

Q. Okay. So is it fair to say that he missed a substantial portion of that season, that is, he wasn't assigned to that route?

A. That would be correct.

Q. Okay. During that period of time until Terry got there, was Mr. Heath working the route?

A. Yes, sir.

Q. Okay. And do you know when he resigned; that is, the date of his resignation?

A. Somewhere around Good Friday of '06.

Q. Okay. So you weren't without a salesman for long?

A. About a week.

Q. Okay. Now, I'm going to show you -- this was marked as Defendant's Exhibit 1 to Terry Watson's deposition.

but not yet sold until Watson got there.

Q. Okay. Who would know what that -- what those figures represent, sir?

A. Someone in the sales office in Union Springs.

Q. Can you give me a name?

A. Dennis Thomas, Kyle Currington.

Q. What is Kyle's job?

A. He's the -- he's vice president or -- under the general manager, whatever is next.

Q. Okay. All right. Well, do you know what the sales on that -- I'm sure I'm taxing your memory, but do you know what the sales were on that route for 2005 when Mr. Heath had it?

A. No, sir.

Q. Do you know if they were more or less than what is listed on that document?

A. I wouldn't remember.

Q. Okay. What about now? Terry

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It's a commission statement for him for the spring of 2006. And this is Bonnie's document, so I would ask for your help in interpreting it, okay?

Now, does that document indicate the sales on the route for both Mr. Heath and for Mr. Watson?

A. It could possibly.

Q. What were the sales on this route for 2006, the spring season?

A. I wouldn't know off the top of my head. I wouldn't recall.

Q. Well, doesn't it show there?

A. Well, I don't know whether this is just for that period --

Q. That he worked?

A. -- that he was there or whether this is for -- see, this could be -- I put out plants for over a week on that route myself after Heath had quit. This could include sales from that week. It could include sales from the week that Heath worked where plants were delivered

Watson worked that route only in 2006, right?

A. For partial of 2006.

Q. Right. Correct. Who's on the route now?

A. I wouldn't know.

Q. So after Terry left, that's when you got reassigned to Kentucky?

A. No, I didn't get reassigned until this year. But there is a new manager there, and he has new people.

Q. Okay. For 2007, you didn't hold the job as a route salesman and station manager in Jasper?

A. Yes, I did.

Q. But that route was assigned to somebody else?

A. In 2007, I assigned Chris Sparks to this route.

Q. Okay. Is he still there?

A. He's still there, but I don't think he's on this same route.

Q. Okay. Did he work the route

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in 2007?

A. Yes.

Q. Is it under your supervision?

A. Yes.

Q. Do you know what his sales were?

A. I think they were twenty to thirty thousand dollars more than the '06 total.

Q. Okay. All right. And is Chris -- I'm sorry, I may have asked you this, but is Chris still working on that route?

A. He still works out of Jasper station. I don't know which route.

Q. Which number he's on, you don't know?

A. Right. Right.

Q. Who is the station manager in Jasper now?

A. Heath Davis. No relation to the last name of the prior Heath.

Q. Hey, have you ever eaten at

Q. Do you know where I could obtain any written complaint about Terry Watson's job performance?

A. Not from me, no, huh-uh.

Q. Well, you didn't keep them?

A. I gave them to him.

Q. You gave them to him?

A. Uh-huh.

Q. Is that correct?

A. That would be correct.

Q. Can you remember any customer who made a written complaint, Mr. Padgett?

A. They were telephone complaints. They call our office. We write it down on a telephone pad, tear it off and put it on their file.

Q. Okay. Well, they would say things like "we're out of something"?

A. Right.

Q. Or --

A. "Need plants, hadn't seen my salesman in a week, out of tomato plants."

Q. Have you ever -- other than

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the Green Top Barbecue?

A. A few times.

Q. Have you ever eaten any better barbecue?

A. Uh-huh.

Q. Okay.

A. It's good.

Q. After this deposition, though, you can tell me where you ate that was better.

A. All right.

Q. Now, during the time that Terry worked under your supervision from late March or early April until July, did you have any criticism of his job performance?

A. I had a lot of customer complaints on him not getting around the route.

Q. Okay. Were any of those complaints in writing?

A. I'm sure some of them at the time were, yeah.

Terry Watson, has that ever occurred in -- since 1999 since you've been a station manager, have you ever had a customer complaint on any other salesman?

A. Not to that volume, no.

Q. Oh, I see. Has it ever occurred before that somebody has called and said they're out of something; "I don't know where my salesman is, but I'm out of a product"?

A. Sure. We hope they're selling them. We don't want them to stay there on the shelf.

Q. That's the point, isn't it?

A. Uh-huh. But we need to get back there with some more so we can continue selling them.

Q. Okay. Well, any other criticism of Mr. Watson's job performance while he worked under your supervision those few months?

A. It all boils down to what you're selling. You know, you got to get

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them there to sell them. That's it in a nutshell.

Q. I understand. In the time that he worked for you, did you ever have an occasion to write him up, reprimand him in writing for any area of his job performance?

A. Didn't have the opportunity in writing, no, sir.

Q. Well, you certainly had the opportunity, but you never availed yourself of that opportunity, correct?

MR. GERHARDT: Object to the form.

Q. Correct?

A. Incorrect.

Q. Okay. Why didn't you have the opportunity to write him up?

A. They were written and already put in his file every time a customer calls. You know, that's kind of a personal -- you know, I take it personal if a store of mine doesn't have product to

A. Two years.

Q. You are able to read and write the English language is my point.

A. I would hope so.

Q. Okay. You know how to write someone up if their job performance is unsatisfactory, correct?

MR. GERHARDT: Object to the form.

Q. You can answer.

A. (No response.)

Q. Sir?

A. I -- I pass the notes on to him.

Q. Have you ever written up Terry Watson?

A. Oh, no, sir. I answered that question.

Q. Have you ever written up any other employee?

A. Yes, sir.

Q. For what?

A. Loading product that they

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sell because I'm paid on what he sells, so I get back there with more product.

Q. Mr. Padgett, do y'all have forms where you can discipline an employee at Bonnie Plant?

A. I'm sure there are.

Q. Do you have access to them?

A. Yes, sir.

Q. Do you have a -- what is the extent of your education, sir?

A. In what form --

Q. Have you completed high school?

A. -- formally?

Q. Yes, sir.

A. Yes, sir, I completed high school.

Q. Did you attend college?

A. I did.

Q. Did you graduate?

A. No, sir, I didn't.

Q. How many years of college have you got?

shouldn't have loaded.

Q. So you have disciplined employees in writing; you know how to do that, right?

A. On one occasion I have.

Q. Did you get them to sign and acknowledge their job performance was deficient?

A. That, I did.

Q. Why did you do that?

A. Situation mandated it.

Q. In fact, it's important to manage an employee that they be made aware and made to acknowledge that their performance, prior performance has been unsatisfactory, correct?

MR. GERHARDT: Object to the form.

A. Mr. Watson was notified that his stores were out of plants in writing numerous occasions, daily.

Q. Sir, employees have to know what the expectations are of management,

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correct?

MR. GERHARDT: Object to the form.

Q. Correct?

A. Don't really understand your question.

Q. You can't do your job until you know what your job is, correct?

A. Oh, Mr. Watson was not a new employee. He knew what his job was. I think he had been working -- I didn't know his past, but I think he had been there for several years.

Q. He had been working over twenty-five years, and he was sixty-two years of age, correct?

A. Don't really know how old he is.

Q. How old are you?

A. Forty-six.

Q. Did he appear to be substantially older than you?

MR. GERHARDT: Object to the

years, you've only written up one person?

A. That's correct.

Q. All right. Is he still with the company?

A. Left voluntarily. I think we covered that.

Q. Okay. Did you put the write-up in his personnel file?

A. I sent it to who is supposed to do that.

Q. Why did you do that?

A. That's what it says to do.

Q. That's right. Because sometimes you may have -- he may not be working for you, may be working for somebody else, correct?

A. I don't know if he's working or not.

Q. So whatever problem you contend Terry Watson created by failing to service your accounts, it wasn't so serious that you had to write him up, correct?

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form.

A. I can't tell how old anybody is these days.

Q. I see. Well, have you ever worked anywhere besides Bonnie Plant?

A. Smith Plant Farm.

Q. Where are they?

A. Union Springs.

Q. Have they been bought by Bonnie?

A. They kind of merged.

Q. What did you do for them?

A. Sold plants.

Q. Did you ever do any management for them?

A. Yes, I did.

Q. Did you ever write up anybody while you were at Smith Plant Farms?

A. No, sir, I didn't.

Q. So you've been -- how long have you been in the plant business?

A. Twenty-eight years.

Q. And in those twenty-eight

MR. GERHARDT: Object to the form.

A. I sell plants. My plants are going to be sold. If he doesn't sell them, it costs him money. I'm going to sell them. So he cost himself money by not servicing his customers.

Q. Sir, I'm not going to be very long with you, but I would appreciate it if you would listen to my question and answer my question. And my question was: Whatever problem Terry Watson had, you didn't think it was so serious as to require you to initiate formal written discipline, correct?

MR. GERHARDT: Object to the form.

A. I think I've stated I have not written up Terry Watson.

Q. And you know how?

A. I passed along customer complaints. I can write up somebody if they need it.

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Q. Okay. And that's the point.

A. Sure.

Q. You didn't think he needed it, correct?

MR. GERHARDT: Object to the form.

A. Passed along -- he missed his commissions on his own, not on anything I did.

Q. If you had thought he had needed it, you would have written him up, though, correct?

A. My point is, I'm going to sell the plants to somebody. If he doesn't get his share, that's his problem. That's his issue.

Q. Now, did anybody ever tell you that Terry Watson had complained of age discrimination before he was sent to work for you?

A. No, sir.

Q. You were unaware of his prior complaint, correct?

A. He was just filling in that position because the salesman had quit.

Q. Well, who made the decision for him to fill in?

A. I guess someone out of Union Springs.

Q. Well, did you hire someone?

A. No. The year ended. He finished out the year.

Q. Right. And then did you hire someone, a permanent replacement?

A. Oh, yes, sir.

Q. Who did you hire?

A. Chris Sparks.

Q. Why did you hire him when you already had Terry Watson?

MR. GERHARDT: Object to the form.

Q. You can answer.

A. I didn't hire Terry Watson.

Q. How old is Chris Sparks?

A. Probably forty-eight. My age or a little bit older.

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A. That's correct.

Q. Do you know where he had worked before?

A. With Bonnie Plant Farm.

Q. Do you know what locations?

A. No, sir.

Q. Let me show you what were marked as Exhibits 4 and 5 to his deposition and ask you if you've ever seen either of those documents?

A. I've never seen these two documents.

Q. Has anybody ever informed you about those two documents before?

A. Not before today, no, sir.

Q. Why did Terry Watson transfer from under your supervision? Did you request that he be transferred?

A. Oh, no, sir.

Q. Do you know why he was transferred?

A. He was never hired by me.

Q. What was he doing?

Q. Well, since Mr. Watson finished out the season with you, have you had any occasion to see him?

A. I have.

Q. Where?

A. At different sales meetings that we've had with Bonnie.

Q. Okay. You mean the annual meeting where all the salesmen get together?

A. Well, we have two. And the annual meeting I guess you'd consider would be the Florida trip, and I don't think I've seen him there.

Q. Okay. What other meetings do y'all have?

A. We have some sales meetings down in Auburn.

Q. What do you call those?

A. Sales meetings.

Q. And so you saw him at that meeting?

A. Uh-huh, yes, sir.

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Q. Did you speak to him?

A. Yeah. Sure.

Q. What did you tell him, do you recall?

A. How you doing.

Q. Just small talk?

A. Just small talk, yeah.

Q. Sure. All right. Did Terry Watson work under any kind of restriction while he worked under your supervision, that is, health restriction? Did he have any limitations?

MR. GERHARDT: Object to the form.

Q. You can answer.

A. In what form? I don't really understand your question.

Q. Is there anything he couldn't do?

A. I don't know what he couldn't do, but he didn't load his truck, and he didn't unload his truck.

Q. Did he have a helper?

A. I don't -- I don't know.

Q. Can you think of any reason why --

A. You just don't do it yourself. You would rather pay other people to do it, I guess. Doesn't make sense.

Q. I see. Do you know what the sales goal was for that route in 2006?

A. There wasn't one with Terry.

Q. Did he receive any commissions in 2006?

A. I'm sure he did. According to this sheet, if this was his pay sheet for that year, yes, he did. Was overpaid.

Q. That means his draw exceeded his commissions, doesn't it?

A. That's correct.

Q. And why did Mr. Heath resign?

A. You'd have to ask Mr. Heath that.

Q. He didn't have a conversation with you?

A. He said "I quit."

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A. He had three of my people. One helper off another truck and two of my greenhouse workers.

Q. Did he have a helper that went with him on his route?

A. He didn't come with a helper. He said he had one, but the guy never showed. His last name was Coon, C-o-o-n.

Q. When he worked under your supervision, was there someone who rode with him on his truck?

A. Sure, yeah, those three helpers.

Q. Three people rode with him on his truck?

A. At times there were three people in there with him.

Q. And who would those three people have been?

A. I don't recall their names.

Q. Why would you need three people on a truck to help you load and unload?

Q. He didn't tell you why?

A. No, he didn't.

Q. Did you ask him?

A. No, I didn't.

Q. Did you want him to quit?

A. I didn't try to beg him to stay.

Q. He really wasn't getting the job done, was he?

A. Not to my satisfaction, no.

Q. Okay.

A. No.

MR. ROBERSON: We'll go off the record for just a minute. The court reporter has a problem. We are going off the record at 1:10.

(Whereupon, a break was had from 1:10 p.m. until 1:12 p.m.)

MR. ROBERSON: All right. We are back on the record at 1:12.

Q. Mr. Padgett, this is the only time I get to talk to you before our trial if we have a trial in this case. I just

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ask you to tell me anything you know about
Terry Watson, my client. If you know
anything negative about him, I'm just
asking you to tell me today so I don't
hear it for the first time at the trial,
okay? Do you understand my question?

A. Yes.

Q. You tell me -- you've already
told me that you had customer complaints
that he wasn't visiting their stores
frequently enough and he -- and they were
out of product at times, correct?

A. Correct.

Q. All right. Is there anything
else negative -- you also told me that he
had three people that worked on his truck?

A. Up to three.

Q. Okay. Is there anything else,
any other criticism or anything bad that
you want to say about Terry Watson? I'm
just asking you to tell me now and not
later, okay?

A. No, it's all about the sales.

MR. ROBERSON: All right. I
don't think I've got anything else. Mr.
Gerhardt, do you have any questions?

MR. GERHARDT: I don't have
any questions either.

MR. ROBERSON: Well, then,
that will conclude the deposition of Mr.
Padgett at 1:15. Thank you, sir.

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I mean, if he -- if his sales would have
been up, no customers complaining -- you
know, it's a difference when you get a
call and they say "I'm out of plants.
I've sold them all this morning. My guy
left me some yesterday." I don't have an
issue with that.

Q. Sure.

A. But when you've got a customer
that calls like Winston County Co-Op in
Haleyville and says, "We haven't seen our
salesman in six days," I have an issue
with that.

Q. Okay. Well, during the few
months that he worked for you, can you say
anything positive about him?

A. Terry is a real likable guy.
I mean, I called him last year even
though, you know, he wasn't working for
me. I knew he was on another truck. "How
are you doing, Terry," scrolling through
my numbers and saw it, you know. We had
about a quick three minute chat.

CERTIFICATE

STATE OF ALABAMA)
JEFFERSON COUNTY)

I hereby certify that the
above and foregoing deposition was taken
down by me in stenotypy, and the questions
and answers thereto were reduced to
typewriting under my supervision, and that
the foregoing represents a true and
correct transcript of the deposition given
by said witness upon said hearing.

I further certify that I am
neither of counsel nor of kin to the
parties to the action, nor am I in anywise
interested in the result of said cause.

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PLAINTIFF ARTHUR WATSON'S
EVIDENTIARY SUBMISSIONS
EXHIBIT 7

In The Matter Of:

ARTHUR T. WATSON

v.

ALABAMA FARMERS COOPERATIVE, INC., ET AL.

NO. 2:07-CV-520-WHA

JOE STUART

May 23, 2008



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ARTHUR T. WATSON
ALABAMA FARMERS COOPERATIVE, INC., ET AL.

JOE STUART
May 23, 2008

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IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CIVIL ACTION NO. 2:07-CV-520-WHA

ARTHUR T. WATSON,
Plaintiff,

vs.

ALABAMA FARMERS COOPERATIVE, INC.,
d/b/a BONNIE PLANT FARMS,
Defendants.

VIDEO DEPOSITION
OF
JOE STUART
May 23, 2008

REPORTED BY: Gail B. Pritchett
Certified Realtime Reporter,
Registered Professional
Reporter and Notary Public

A P P E A R A N C E S

FOR THE PLAINTIFF:

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Attorney at Law
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Birmingham, Alabama 35238

FOR THE DEFENDANT:

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Attorney at Law
Burr & Forman LLP
3400 Wachovia Tower
Birmingham, Alabama 35203

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S T I P U L A T I O N

IT IS STIPULATED AND AGREED,

by and between the parties, through their
respective counsel, that the deposition of
JOE STUART may be taken before Gail B.
Pritchett, Commissioner, Certified
Realtime Reporter, Registered Professional
Reporter and Notary Public;

That the signature to and
reading of the deposition by the witness
is waived, the deposition to have the same
force and effect as if full compliance had
been had with all laws and rules of Court
relating to the taking of depositions;

That it shall not be necessary
for any objections to be made by counsel
to any questions, except as to form or
leading questions, and that counsel for
the parties may make objections and assign
grounds at the time of trial, or at the
time said deposition is offered in
evidence, or prior thereto.

I N D E X

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EXAMINATION BY MR. ROBERSON

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I, Gail B. Pritchett, a
Certified Realtime Reporter and Registered
Professional Reporter of Birmingham,
Alabama, and a Notary Public for the State
of Alabama at Large, acting as
Commissioner, certify that on this date,
as provided by the Federal Rules of Civil
Procedure of the United States District
Court, and the foregoing stipulation of
counsel, there came before me at the law
offices of Burr & Forman, LLP, 3400
Wachovia Tower, Birmingham, Alabama, on
the 23rd day of May, 2008, commencing at
12:57 p.m., JOE STUART, witness in the
above cause, for oral examination,
whereupon the following proceedings were
had:

MR. ROBERSON: All right.
This is the videotape deposition of Joe
Stuart. It's being taken in the case
pending in the United States District
Court for the Middle District of Alabama,

MR. ROBERSON: Yes.

MR. GERHARDT: Yes, ma'am.

EXAMINATION BY MR. ROBERSON:

Q. Mr. Stuart, my name is Jerry
Roberson, we met just briefly before the
deposition.

Would you give me your full
name, please, sir?

A. Joe Wheeler Stuart.

Q. And your residence address,
including the zip code?

A. 17227 Highway 82, Union
Springs, Alabama 36089.

Q. And are you employed with
Bonnie Plant Farms?

A. Yes, sir.

Q. In what capacity, Mr. Stuart?

A. I'm a sales manager.

Q. For the entire nation?

A. Not now. I'm the sales
manager for the -- basically west of the
Mississippi River.

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Northern Division, styled Arthur T.
Watson, that's Terry Watson, plaintiff,
versus Alabama Farmers Cooperative, Inc.,
doing business as Bonnie Plant Farms,
defendant, CV-07-520.

My name is Jerry Roberson. I'm
the attorney for the plaintiff Terry
Watson, and I'm also operating the video
camera. I would ask all counsel of record
to state their name and the party they
represent.

MR. GERHARDT: My name is
Graham Gerhardt, and I'm appearing on
behalf of the defendant.

MR. ROBERSON: Would you swear
our witness, please, ma'am?

JOE STUART,
having been first duly sworn, was examined
and testified as follows:

THE COURT REPORTER: Usual
stipulations?

Q. Okay. So there is another
sales manager for the other side of the
river?

A. There is now, yes.

Q. Okay. At one time before
y'all made that territorial division, were
you the sales manager for the whole U. S.?

A. Yes, sir, I was.

Q. Okay. When did that stop?
When did y'all realign?

A. Maybe two years ago.

Q. All right, sir. And what's
the extent of your education, Mr. Stuart?

A. I went four years to Troy
State, did not graduate, and -- that's
basically it.

Q. What was your course of study?
What were you majoring in?

A. Geography.

Q. Well, it's not hard to
understand how you got in the plant
business, then, if you were a geography
major.

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How long have you been in the plant business, Mr. Stuart?

A. Since I was nineteen years old, and I'm presently sixty-five.

Q. Okay. So you were working while you were going to school?

A. This is seasonal work. And I'd go to school -- I actually went to school six years, but seasonal work.

Q. Okay. So in the spring season you worked at Bonnie Plant, and you'd go to school in the fall, is that the way it worked?

A. That's correct.

Q. All right, sir. Now, you know my client, Terry Watson?

A. Yes, sir.

Q. How long has he been working for Bonnie Plant Farms, if you -- approximately, if you know?

A. I would guess for Bonnie Plant Farm he has been probably working for -- approximately fifteen years.

Q. So you have been knowing Terry Watson for about thirty years?

A. I knew Terry at Troy State when we were in school together down there, and then he -- we lost contact for about fifteen years. And then he came to me when I had my company in Texas and I gave him a job working for me.

Q. Okay. And he worked as a route salesman for you?

A. I took him to a route in south Louisiana and opened up the route for him, trained him on the route, and he continued on the route as a salesman for it.

Q. How long did he work as a route salesman in Louisiana for you, for your company, approximately?

A. I would say six to eight years. I don't know, really. Maybe ten, I don't know.

Q. And where was his route?

A. South Louisiana, on I-10 down in southern Louisiana.

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Q. Okay. Did he work in the plant business before that?

A. He worked about ten years for me.

Q. Okay. Well, maybe we need to explain that.

When -- did you have a plant company for a period of time?

A. I did, for about twelve or fifteen years.

Q. And where was that business located?

A. In New Summerfield, Texas.

Q. Okay. And what was the name of it, sir?

A. Joe Stuart & Company.

Q. Okay. And was that business acquired or merged in to Bonnie Plant Farms?

A. Yes, sir.

Q. Okay. And approximately what year did that take place?

A. Around '92.

Q. And then Bonnie Plant acquired your company?

A. Yes, sir.

Q. Were you the only shareholder in that company at --

A. Yes, sir.

Q. -- owned all of the stock?

A. Yes, sir.

Q. So they purchased your company, and you went to work for Bonnie Plant?

A. Uh-huh.

Q. Is that correct?

A. Yes, sir.

Q. Was that a part of the purchase agreement, that you would go to work for them? Or was that just something that happened?

A. I can't really remember if that was part of the reason. I mean -- of course, it was a monetary figure was the main thing, but it could have been.

Q. Okay. And when you operated

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your plant business, where did you sell plants? I mean, were you a nationwide company too?

A. No, no. No, no.

Q. You were smaller in area?

A. Yeah, I was a regional type company. East Texas, Oklahoma, Arkansas, western Kentucky, southern Illinois, southern Missouri was basically my territory.

Q. Okay. Now, when Terry went to work for Bonnie Plant when they acquired your company, did he remain a route salesman in south Louisiana?

A. Yes, he did, on the same route that he was running for me.

Q. Okay. So really nothing changed --

A. Nothing changed.

Q. -- from his standpoint other than the name?

A. That's correct.

Q. Okay. And a route salesman's

couple, several.

A. The station manager for Terry when he worked for south Louisiana still with Bonnie Plant Farms?

Q. Yes.

A. That would be Bill Reiner.

Q. I'm sorry, Bill --

A. Bill Reiner, R-e -- R-e-i-n-e-r, I think.

Q. Is he still with the company?

A. He is still the station manager in Louisiana --

Q. Okay.

A. -- I mean, in Texas.

Q. So the station for that location in Louisiana was in Texas?

A. Yes, sir, just right across the line.

Q. Okay. Now, at some point, I believe it was around 2003 or 2004, Terry Watson initiated a transfer; do you -- do I understand that correctly?

A. He requested to go to a

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job is just to sell plants, and they have to stock them in the various locations, correct?

A. That's some of the things they have to do. There are a lot of other things they have to do.

Q. Okay. Well, I have never worked as a route salesman, so tell me what they are required to do.

A. Well, they have to load the truck, get in and out of the truck, see what kind of inventory they have, go in and meet the customer with a pleasing personality and a positive mental attitude, shake their hands and establish a relationship with them, and work the route, pick up the old stuff, put them back on the truck, carry them back to the greenhouse location, unload the truck and reload the truck back.

Q. Okay. And who -- who was the station manager for Terry when he worked at south Louisiana? I suspect he had a

smaller route that didn't require as much work.

Q. Okay. A shorter route?

A. A shorter route and one that did not have fall routes on it where he wouldn't have to work in the fall. So he could draw his unemployment and not have to work in the fall.

Q. Okay. And one of the reasons for that was because he was under -- going to undergo some surgery that would -- he would undergo in the fall, correct?

A. I did not know that.

Q. Okay. Well, you know now that he did --

A. I know now -- I know now that he went through. At the time I didn't know that.

Q. Okay. Well, the point of my question is that Terry -- this transfer was initiated by Terry, correct?

A. It was probably a fifty/fifty deal between Butch Stuart and Terry

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Watson. I don't know who actually said let's see if we can do this first. I really don't know who said that first.

Q. Okay. But then -- both of the salesmen wanted to swap routes; and management, including you, agreed or approved that swap, that transfer, correct?

A. We did.

Q. Okay. And I assume had -- Terry had remained employed for about twenty-five years; I assume he was doing a capable job or a satisfactory job as a route salesman?

A. Where?

Q. In Louisiana.

A. He was doing a satisfactory job.

Q. Okay. Now, Mr. Stuart, did -- a lot of -- I've take -- I've represented several salesmen, not plant salesmen, but salesmen in the past. And normally the salesmen I've represented on an annual

sales goal; do you understand what I'm talking about?

A. Sure.

Q. Okay. And at Bonnie Plant, how do y'all arrive at a sales goal for a particular territory?

A. We would take a territory and look back at the history of it of how it has been selling. And every route we have, nearly every route has an increase over the year before. It's common -- it's uncommon to have a decrease. Something is wrong if we have a decrease. But every route we have has an increase, so we base that on our projected increase on each route and establish a goal for that route.

Q. All right. I'm just going to throw out a figure. Let's say we sold three hundred thousand dollars' worth of plants in 2007, okay?

A. Uh-huh.

Q. Your sales goal for 2008 for that route would be three hundred and what

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basis receive a written job evaluation. Did y'all do that at Bonnie Plant?

A. No, sir, we didn't do that.

Q. Okay. So there aren't any written job evaluations for any of your salesmen?

A. We have a salesman's job description. I think Tina Johnson wrote one up this past year or two.

Q. Just the job description. But as far as a form or a standardized way --

A. No.

Q. -- y'all evaluate salesmen --

A. No, sir.

Q. -- y'all don't have one of those?

A. We don't do that.

Q. Okay. I just wanted to make sure. But you know what I'm talking about?

A. Yeah.

Q. All right. Well -- and in the -- I -- every salesman normally has a

thousand? How much of a percentage increase would you expect or would you hope for?

A. Depending on how many Wal-Marts and how many Home Depots or something like that has opened up. They are opening up some all the time, and so depending on what kind of new -- new business was coming into the route or we split the route up to try and increase our service capabilities, I would say around a seventy-five to a hundred thousand.

Q. Of increase?

A. Is what we expect.

Q. So if you had a three hundred thousand dollar route, you would expect to have a four hundred thousand dollar --

A. Three seventy-five to four hundred, sure would. Wal-Mart may do twenty-five thousand. Three Wal-Marts open up and you have got that covered, even if you didn't do better than what you did the last year.

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Q. Okay. So your sales quota or goal will depend in part on any new stores that come on line on your route, is that a fair statement?

A. That's a fair statement. And the territory, the geographic territory that we are working. A route in New York would be expected to make more than one in Kansas, for population reasons.

Q. Okay. So how concentrated the population is can cause a difference too?

A. Yes, sir.

Q. All right. And -- now -- but I understand that every year you realign the routes to try to keep them equal or balanced, is that correct?

A. No, sir, that's not correct.

Q. Okay. Explain to me, do y'all routinely make changes in the routes?

A. Yes, sir.

Q. Okay. How do y'all change the routes?

A. We change the route due to the

correct, from year to year?

A. Repeat that question, please, sir.

Q. Okay. When you compare your sales on the route from one year to the next, you have to be careful because you are comparing apples to oranges if the route has changed; do you agree with that?

MR. GERHARDT: Object to the form.

A. Can you rephrase that question?

Q. Yeah. You agree with me that the routes change from year to year, the number of stores and the locations that are serviced?

A. Some of our routes do change from year to year.

Q. Okay. And if they change, then you have to be careful when you compare the sales from one year to the sales -- just the figure for the sales the following year, correct?

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service capability on it. The money is not really a factor. We have to satisfy the customers. And if we are a little lax on doing some service work, we may take some customers off of this route, add to this truck, or create another route altogether and put on another truck. We do that all the time all over the country.

Q. Well, I apologize, I may have misspoke, but the point I'm trying to make is that your routes and the customers on your routes also vary from year to year; is that a fair statement?

A. Yes.

Q. I mean --

A. The number of customers on the route --

Q. Right.

A. -- can vary from year to year.

Q. Okay. So when we compare the sales for one year, we have to be careful, because that same route may have lost some stores or may have added some stores,

A. Careful to who?

Q. Well, I may have lost a Wal-Mart store or a large account in the following year, it may have been reassigned to another route or, as you say, we may have created another route, so my sales may actually go down even though I sold more to everybody else?

A. It's very rare that we have sales that go down.

Q. Okay. Now, when Terry went to -- is it Bells, Tennessee?

A. Yes, sir, I guess.

Q. Okay. And he worked on that route for two years, Butch's route? They swapped and he worked Butch's route?

A. They swapped.

Q. Did he do a satisfactory job as a salesman up there in Tennessee?

A. The first year?

Q. At any time, however long he was up there.

A. I would say that his work was

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a little less than satisfactory.

Q. And as the national sales manager, would you -- would you talk to the station managers from time to time?

A. Yes.

Q. Did you have any complaints about Terry Watson from the station manager?

A. Yes.

Q. What were those -- the nature of those complaints, sir?

A. Most of the complaints that come from Terry is the fact that we deal with a perishable product. And a perishable product, quick as you can get it out on the route, the longer the shelf life. The longer the shelf life means more dollars, better chance for it to sell. Terry was somewhat a little lax in getting all of the customers worked on a timely basis.

Q. Okay. Are there any written documents in Bonnie Plant Farm documents

it's a W-2 or something in the nature of that for Terry Watson for the year 2000.

Is that what -- your understanding of what that is?

A. (Reviewing document.) Yes, that's what it looks like.

Q. I mean, some type of earnings statement for Terry Watson, correct?

A. Yes, sir.

Q. And in 2000 he would have been working that south Louisiana route, correct?

A. Yes, sir, I think so.

Q. All right.

(Whereupon, Plaintiff's Exhibit 2 was marked for identification.)

Q. Now, I want to show you what I'll marked as Exhibit 2, which is a W-2 form for 2001 for Terry Watson.

And can you read the writing on there? What -- what is reported as his wages for that year?

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that would indicate that, that would corroborate that complaint, sir?

MR. GERHARDT: Object to the form.

Q. You can answer.

A. There are no documents that I know of, because we don't keep written documents -- or document things like that.

Q. Mr. Stuart, I'm going to show you some documents that have been made available to me today by your attorney, and I'm going to mark the first -- have you had a chance to look at these before the deposition?

A. Before right now?

Q. Yes, sir.

A. I don't -- no, sir.

(Whereupon, Plaintiff's Exhibit 1 was marked for identification.)

Q. Well, let me show you what I've marked as Exhibit 1, and that looks like just some kind of printout. I assume

A. In 2001?

Q. Yes, sir.

A. Let me see if I can find it here. (Reviewing document.) Looks like twenty-nine thousand five thirty-five eighty. Does that look right to you? It's sort of crimped in there, you'll see what I'm talking about.

Q. Yeah, they have got -- they've got wages of twenty-nine five thirty-five, but then they have Social Security wages of thirty-four nine fifty-four. Now, do you know why that is?

A. No, sir.

(Whereupon, Plaintiff's Exhibit 3 was marked for identification.)

Q. Well, if you would, I'll ask you -- and if you will tell me what the Social Security wages are for what I have marked as Exhibit 3 which is for 2002 for Terry Watson, the Social Security wages?

A. (Reviewing document.) Looks

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like four thousand fifty-nine forty-one.
There is a little line in there, it's sort of hard to read.

Q. It's forty thousand four hundred fifty-nine.

A. Okay. Okay.

Q. All right. And these guys that work as route salesmen, what's reported on their W-2, is that the money that they earn after they pay all of their expenses, you know, the -- their helpers and everybody?

A. It's my understanding that is.

Q. Okay. In other words, it's lower than their commissions, they will make more than that in commissions, but out of the commissions on the route they have to pay certain expenses, correct?

A. Yes, sir.

Q. And what expenses do they have to pay?

A. Motel rooms if they spend the night on the road, a lot of them -- if

line there. Do you see what I'm talking about?

Q. Yeah, it looks like twenty-eight four ninety. Twenty-eight forty ninety. All right.

(Whereupon, Plaintiff's Exhibit 5 was marked for identification.)

Q. And Exhibit 5, his wages -- his W-2 in 2004, his Social Security wages are twenty-three oh twelve, is that correct?

A. Yes, sir, that looks right. I can see that figure.

(Whereupon, Plaintiff's Exhibit 6 was marked for identification.)

Q. Let me show you Exhibit 6, which is W-2 for 2005. And do you agree with me that his Social Security wages are listed at twenty-four thousand five eighty-eight?

A. Yes, sir, that's what it looks

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it's a short route, you go back home every night and you don't spend the night on the road. Some of them have long routes and have to spend the night on the route and stuff like that.

Q. Okay. So motel, their helper, and anything else?

A. That's basically about it.

Q. Okay. All right. And then let me show you what I will mark as Exhibit 4, which is his -- again, he's still working south Louisiana during this time period. I believe he went to Bells, Tennessee in 2004, but he has testified about that, so --

(Whereupon, Plaintiff's Exhibit 4 was marked for identification.)

Q. This is -- this is his W-2 -- what are his wages in 2003, his Social Security wages in 2003?

A. Twenty-eight something ninety point nineteen. I can't read that little

like.

(Whereupon, Plaintiff's Exhibit 7 was marked for identification.)

Q. 2006, his Social Security wages are forty-five nine twelve?

A. Yes, sir.

(Whereupon, Plaintiff's Exhibit 8 was marked for identification.)

Q. And in 2007, his Social Security wages are eighteen oh seventy-nine?

A. Yes, sir, that looks correct.

Q. Okay. Now, after Terry Watson worked the spring of 2005, did you have any contact with him after his surgery, his knee surgery?

A. I don't think so.

Q. Well, do you know why he wasn't returned to his route in Bells, Louis -- Bells, Tennessee in 2006?

A. Why he wasn't returned there?

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Q. Yeah.

A. Because the station manager, Mr. Adam Alley, requested that he not -- that he didn't want to fool with him again. It has been my experience and my history to -- if any of the station managers that -- who is the salesman's immediate supervisor requests that they do not want someone back the next year, I have always gone along with that. I don't want to create an atmosphere that's not conducive to a good salesmanship. And I felt like a situation where one man doesn't want another one back would create a problem, so that's why he was not.

Q. And when did Mr. Alley have a conversation with you about he didn't want Terry back?

A. It was something -- it was after the season was over. I can't remember exactly when it was.

Q. And so you knew Terry wasn't going back to that route, correct?

Q. And this is a letter that

Terry Watson gave to Tate Gatlin, who is your -- Tate is -- what do you call him, your --

A. I think you would call him the safety director.

Q. Safety director. In other words, all your route salesmen drive a truck, correct?

A. Yes, sir.

Q. And as part -- in order to be a route salesman, they have to be approved as a driver by DOT, correct?

A. Correct.

Q. So they have to have a bi -- is it biannual physical or something? They have to have some kind of card?

A. Or annual physical.

Q. Annual physical, okay. So this is the letter Terry gave Tate on January 10th, 2006. And apparently as of that date, no one had told Terry where he was working. Would you look at Exhibit 9?

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A. I hadn't -- I hadn't told Terry about that at that time, but I think I -- sometime in the early fall or something -- I don't really remember when I told Terry, but I did tell Terry.

Q. Well, where did you tell Terry he was going to work?

A. I told him I would try to find him something and try to help him out where he could stay on the insurance. That's what he requested he wanted to do, that he was just working for the insurance, and I said well, I will try to find him something, so -- and that's how we tried to create a route down in Donaldsonville, Louisiana, just so Terry would have a job.

Q. Well, let me show you what I have marked -- what I will mark as Exhibit 9.

(Whereupon, Plaintiff's Exhibit 9 was marked for identification.)

MR. GERHARDT: Let me object to the form of that statement.

Q. Have you seen that document before today?

A. I have not seen this. I couldn't -- I don't remember seeing this.

(Whereupon, Plaintiff's Exhibit 10 was marked for identification.)

Q. Well, let me show you Exhibit 10. Well, after Tate got that letter, did he call you?

A. I don't remember him calling me.

Q. Well, what would Tate do -- if he got a complaint of age discrimination, what would he do?

MR. GERHARDT: Object to the form.

A. I don't know what Tate would do.

Q. I see. Well, do y'all have a policy in writing out there at Bonnie

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Plant Farms about age discrimination?

A. A policy in writing? We are aware of all types of discrimination, and I don't know if it's in writing out there, but we -- we are aware of that.

Q. Well, do you know how old Terry Watson was on January 10th, 2006?

A. Well, I'll just have to use simple arithmetic. If he is sixty-two years now and that was two years ago, how about sixty?

Q. Sixty. He is sixty -- he is actually going to turn sixty-one on January 12th, two days later. And he had had a knee replacement and he's asking for a job. He wanted the job in Tennessee, and he did not understand why he had not been allowed to return to his route.

Did you have a conversation with Terry about this time?

MR. GERHARDT: Object to the form.

A. I don't even know if Terry was

filled in January of 2006? Did you have any open routes?

A. I think at that time we didn't have any open routes.

Q. You did or did not?

A. Did not.

Q. Let me show you what I will mark as Exhibit 11.

(Whereupon, Plaintiff's Exhibit 11 was marked for identification.)

Q. Y'all recently started some policy where y'all have your drivers seen by a -- some type of therapist or something, physical therapist?

A. Have we recently started that?

Q. Yeah, a wellness group?

A. I think Tate may have something like that going. But he and I are separate, I don't know what all he may have going on there.

Q. Let me show you what has been marked as Exhibit 11 and ask you if you

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physically able to work at that time. And I may have had a conversation with him, but I told him I -- and I don't know the timetable of that, when it actually occurred, but I do remember telling him I would find him something.

Q. Okay. Well, let me show you what I marked as Exhibit 10, which is a letter dated February 2nd. It's to Tate, but it's copied to you, to Joe Stuart.

Did you receive that letter?

A. (Reviewing document.) I don't remember seeing this letter, sir.

Q. Well, did you take any action after this letter was sent to Tate and to you?

A. Well, I don't remember seeing the letter, but -- somewhere after that period there, but I don't remember seeing that letter, I did find -- try to create an opening in Donaldsonville, Louisiana for Terry.

Q. Well, were all your routes

have ever seen that document?

A. (Reviewing document.) No, sir, I don't remember seeing that before.

(Whereupon, Plaintiff's Exhibit 12 was marked for identification.)

Q. Well, I will show you what I've marked as Exhibit 12 and ask you if you have ever seen this document. It's a release statement from Terry Watson's physician dated January 26, 2006.

A. (Reviewing document.) I didn't even know he was in this kind of shape. I haven't seen that before.

Q. So none of the actions you took were because of Terry Watson's health, that is to create him a position?

A. No, the actions I took was because of his -- not because of his health or his age.

(Brief interruption.)

MR. ROBERSON: Excuse me, I meant to turn that off. I apologize.

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Q. (BY MR. ROBERSON:) So you weren't aware of any restrictions that Terry Watson had as concerns his work in the spring season of 2006?

A. I wasn't concerned with any health issues that he had at that time. I was just concerned with the complaints that we had gotten on the route.

Q. And the complaint coming from his station manager, Mr. Alley?

A. Station manager, and I had some customers call me personally and tell me that the man is asleep in the truck and he is not working the route properly.

Q. Who called you?

A. I think I had one in Summerville, Tennessee. Boswell Feed & Seed, Mr. Frank Boswell, I started him up myself, he is an old friend of mine. I also had another one from the Farmers Co-Op in Selmer, Tennessee.

Q. All right. Who -- what's the name of the individual that called you

just two that I personally got.

Q. Who -- who is the other one?

A. Farmers Co-Op in Selmer, Tennessee. I don't know who called from the store.

Q. Selma?

A. S-e-l-m-e-r.

Q. And it was service complaints or lack of service complaints?

A. Lack of service, yes, sir.

Q. Well, have you ever received any calls like that on any other route salesmen?

A. I have occasionally. Not many times, but occasionally.

Q. And did you transfer them?

A. On occasions, on one or -- once or twice I might have.

Q. Can you give me the names of anybody you transferred?

A. I usually -- sir?

Q. Can you give me the names of anybody you have transferred after

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from Summerville, Tennessee?

A. His name is -- Boswell Feed & Seed is the name of his store.

Q. And do you know who called you?

A. I think it was Frank Boswell himself, but I'm not for sure which one of the people at the store called me.

Q. And when was this --

A. One of the -- one of the employees at the store called me.

Q. When was this?

A. This was in -- at -- toward the middle to the end of the season in Bells in -- whatever his second trip was up there.

Q. 2005?

A. I guess.

Q. And why wouldn't they call Mr. Alley?

A. Well, they had called Mr. Alley, I guess. He had told me about some similar complaints that he had. Those are

receiving a complaint like that?

A. Well, let's see here. Let me stop and think here. Removed -- removed a boy from Salt Lake City this year and sent him to Plainville, Kansas. He later was caught with liquor in his truck and we fired him --

(Reporter interruption.)

A. He later was caught with liquor in his truck and we had to fire him. Moved a boy from Milton, Wisconsin to Kennedyville, Maryland.

Q. Do you know either of those individuals' names?

A. That man -- that boy's name is Nick Reeder.

Q. Nick?

A. Nick Reeder, R-e-e-d-e-r. And that guy in Kansas we fired, I don't remember his name.

Q. This route that Terry -- so for almost thirty years the only transfer Terry Watson had was one that he

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initiated, correct?

A. One that him and the other salesman collabor -- collaborated on.

Q. Okay. And since his two letters to you -- or two letters, one to Tate Gatlin and one to you and Tate Gatlin, and his complaint of age discrimination, beginning in the spring of 2006, how many different routes has Terry held?

MR. GERHARDT: Object to the form.

Q. You sent him to --

A. Where was he at?

Q. He was in Bells, Tennessee and you sent him to Donaldsonville, Louisiana.

A. He didn't stay there but --

Q. A couple of weeks?

A. Two weeks, two or three weeks.

Q. All right. And then he went to Jasper?

A. We had a route to come open, it would make more money for Terry, a

just two routes. He never had a route in Donaldsonville, Louisiana.

Q. Okay. It was a job, but it wasn't a route?

A. Right.

Q. All right. And that job, he didn't receive any commissions, he just got a draw, correct?

A. He got -- he -- he has been on the draw for fifteen years from us, never been cut off at all, always been on the insurance.

Q. Okay. And when he worked in Jasper, his draw exceeded his commissions, correct?

A. I think that's what the records show.

Q. Okay.

A. But I don't deal in that.

Q. And in -- in Texas -- is he going back to that route next year in Beeville, Texas?

A. In Beeville?

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chance to do better. Since we really didn't really have a route for him in Donaldsonville, I moved him to that route. And he was very appreciative of it, too, by the way.

Q. And that was the route that -- you sent him to Donaldsonville, will you agree with that?

A. To try to create a job for him.

Q. Okay. And you sent him to Jasper?

A. Where there was a route already available.

Q. Okay.

A. He was tickled to death with it.

Q. What route is he on now?

A. He is on a route in Beeville, Texas.

Q. So that's three routes, correct?

A. Yes, sir. But -- no, it's

Q. Yes, sir.

A. If the station manager down there says they want him back, then I will certainly put him back down there, unless I can find him a better route somewhere. And I will try to find him a better route, try to help him every way I can.

Q. Who held the route in Jasper before Terry, what's the gentleman's name that left that route?

A. I don't remember. We have got four hundred and sixty-two salesmen, and each one of them has got a helper, so --

Q. Who took Terry's route, Leslie Braun in Tennessee?

A. Les Braun took over Bonnie's route in Tennessee.

Q. And how old is he, do you know?

A. He is in his thirties. I don't know how old he is.

Q. Early thirties?

A. I guess.

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Q. Mr. Stuart, is Terry Watson a good employee?

MR. GERHARDT: Object to the form.

A. He has been a good employee, yes, sir.

Q. Can't really be a bad employee for thirty years, can you?

MR. GERHARDT: Object to the form.

A. Can you be a bad employee for thirty years. Reword that to me.

Q. Well, if he wasn't doing an adequate job, he wouldn't have been there for thirty years, would he?

MR. GERHARDT: Object to the form.

A. Not particularly. I tried to help Big Terry because he has been my friend, and even though I -- he wasn't doing a good job, I still tried to cover up for him and find him a job.

Q. So it's your testimony that

depends on the service. If you give good service, they are going to like you. And you have got a quality product, of course.

Q. And does Terry know the job, know what needs to be done?

A. I would think he should, yes, sir.

Q. And has he demonstrated that he is capable of doing it?

MR. GERHARDT: Object to the form.

Q. You can answer.

A. At times he has destrim -- demonstrated that, yes, sir.

Q. How old is Adam Alley?

A. You know, I don't really know, I would say -- I would just guess and say early forties, but I do not know.

Q. Now, when y'all hire a new salesperson to work as a route salesman out there, is that a decision that you are involved in normally, at least if it's on your side of the Mississippi?

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you were covering up for Terry Watson in the last two years?

A. No, sir, that's not my testimony.

Q. Oh. I'm sorry, I misunderstood you. Well, how -- when did you cover up for him?

A. I never have covered up for him, but I tried to always find him a job where he could stay on the payroll and keep working and everything.

Q. Well, do you like him?

A. Sir?

Q. Do you like Terry?

A. Yes, sir.

Q. Do the customers seem to like him?

MR. GERHARDT: Object to the form.

A. Well, some customers liked him and some probably didn't like him.

That's -- that can be said about a lot of our salesmen, though, I suppose. It all

A. Well, I was involved in it a lot more than I am now, but now we have someone else who pretty well strictly gets involved in the interviewing and checking prospective salesmen out and stuff like that. I used to do a good bit of that.

Q. Who does it now?

A. Tim Trussell and Dan Jacobsen.

Q. Well, are you made aware when they hire a new person?

A. Not in every instance, no.

Q. I'm sorry?

A. Not in every instance.

Q. Well, to your knowledge, in the past five years, has Bonnie Plant Farms hired a salesman who was age sixty or over at the time that they hired him?

A. Yes, sir.

Q. Who was that, please, sir?

A. We have a man on a route right now in Kansas who is seventy-one years old, Earl Ledbetter.

Q. When did they hire Mr.

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Ledbetter?

A. Earl Ledbetter has been working for us for about thirty years.

Q. No, you misunderstood my question, or I didn't make it clear.

Have y'all hired a salesman who at the time you hired him he was sixty years old?

A. I think we hired -- we've got a man in North Dakota now, I think his name is -- ah -- it's Dana Edwards or Dana something or other, and I think he's sixty-one.

Q. When was he hired?

A. This year. First year he worked for us.

Q. So he was hired after Terry Watson's lawsuit alleged age discrimination, correct?

A. Yeah, but before that I had hired a guy before I even knew anything about Terry, Doodle Barnett was his name, he was sixty-eight years old. I actually

Q. Let me show you what I've marked as Plaintiff's Exhibit 13. This is Terry Watson's EEOC charge, and it was received by the EEOC on June the 2nd -- I'm sorry, June 6th of 2006, and it should have been forwarded to Bonnie Plant Farms shortly thereafter.

A. (Reviewing document.)

Q. Have you seen that document before today?

A. No, sir.

Q. Well, who responds to EEOC charges for Bonnie Plant Farms?

A. I think Tina Johnson --

MR. GERHARDT: Object to the form.

A. I think Tina Johnson at AFC does that.

Q. What is her position, sir?

A. She's in charge of human resources, I believe. I'm not sure about that. I don't know.

Q. Well, if they have a

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didn't know he was sixty-eight, but he was sixty-eight, and done a pretty good job.

Q. Do you think folks can make valuable contributions to the work force regardless of their age?

A. I certainly do.

Q. Some folks won't work worth a crap and they are under age forty, right?

A. I'm certain that's true.

Q. Well, did you get Mr. Watson's EEOC charge?

A. Did I get what?

Q. Terry Watson filed an EEOC charge. Are you aware of that?

A. I am now, of course.

Q. When were you first made aware of it, sir?

A. I believe I was informed by Tina Johnson, and I really don't remember exactly when she told me that.

(Whereupon, Plaintiff's

Exhibit 13 was marked for identification.)

salesperson making a complaint, a charge of age discrimination, would they come and talk to you about it?

A. She called and told me about that.

Q. So you were aware of it after -- shortly after Bonnie Plant --

A. Not -- you asked me if I had seen that. I was aware when Tina called me. I don't remember when she called.

Q. Okay. She didn't show you the document?

A. No, sir.

Q. When Terry sent that second letter in February of 2006, did he come and meet with you?

A. What was the time frame of that?

Q. Somewhere sounds like approximately February of 2006.

A. I think he did. And that's where I said I found him something in Donaldsonville, Louisiana, if I have got

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the right time period here.

Q. Did he tell you he thought he was being discriminated against at that meeting?

A. I think he did, sir. And I told him we had people out here already older than you, Terry.

Q. Well, did you tell him that Adam Alley didn't want him back?

A. At that time, yes, sir.

Q. That's what you said to him?

A. I said that Adam has requested that he not get you back and I'm going to find you something else, and I did.

Q. Do you agree with me that Terry Watson has made less money in his subsequent routes than he was making in Tennessee?

MR. GERHARDT: Object to the form.

Q. You can answer.

A. Do I agree that he has made less money?

route could pick it up to where he would actually have more sales if he was a good hustler than what he had in the one he was moving from.

Q. And you agree with me that Terry told you at your meeting in February that he believed he was being discriminated against, correct?

MR. GERHARDT: Object to the form.

Q. Correct?

A. When did Terry do what, now?

Q. Terry Watson met with you and made a complaint of age discrimination, correct?

A. He didn't -- he didn't really make a complaint of age discrimination, but -- yeah, he met with me and I told him about the new route in Donaldsonville, Louisiana, of a new -- a chance for him to stay on the payroll in Donaldsonville, Louisiana.

Q. And, in fact, the only routes

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Q. Yeah, he has had less sales, less commissions and made less money?

A. I agree that he had less sales, but some of it was his own fault for having less sales.

Q. Well, the route that you assigned to him after his complaint of age discrimination, did it have more sales than the Bells, Tennessee route in 2004 and '5, sir?

A. He did not have more sales, but it could have had.

Q. Well, Terry Watson wasn't working there then, was he?

A. Working where?

Q. On these other routes in 2004 to 2005. So you knew that you were transferring Terry Watson to a route that had less sales than the one he came from, correct?

A. Well, I knew that the route he was transferring to would have less sales, but I thought the potential of this other

he has been assigned by you have been long routes, correct?

A. No, sir, that is not correct.

Q. Is the route he is on now a long route?

A. The route he is on now is longer than the one that he was on, but the route that he had in Jasper was probably shorter than the one he was on.

Q. Well, why did you move him from Jasper to Texas?

A. I moved him from Jasper because Joey Padgett had hired someone else the next -- the next year to run the route and really expressed somewhat interest that he would prefer that he didn't hire Terry back -- or that Terry didn't come back.

Q. Is there anything in writing about that?

A. No, sir.

Q. Who is the station manager that Terry is working for now?

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A. I believe his name is Chris Hall.

Q. Have you had any discussions with Chris about the job Terry is doing?

A. Early in the year we did, but that --

Q. And what kind of job is he doing?

A. We had some complaints for him earlier. And we documented these complaints this time around.

Q. How did you document them?

A. We got phone calls from customers, Chris Hall did, and he had a little phone call and he would write in the complaints and the telephone number of the person that called. And so that's how he did that, to my knowledge.

Q. Did y'all do that for anybody besides Terry Watson?

A. Oh, yeah, we try to -- we don't -- we don't document everything, but we -- now we try to -- or now -- we always

Ryan Howard in Terra Bella, California.

Q. I tell you what, Mr. Stuart, let's go off the record. I need to change my tape. We will take a break for about five minutes, and we will finish up in the next hour, okay?

A. All right.

MR. ROBERSON: Let's go off the record. Going off the record at 1:52.

(Whereupon, a break was had from 1:52 p.m. until 2:01 p.m.)

MR. ROBERSON: This is tape two of the videotape deposition of Joe Stuart.

Q. (BY MR. ROBERSON:) Mr. Stuart, we are back on the record at 2:00.

(Whereupon, Plaintiff's Exhibit 14 was marked for identification.)

Q. I'm going to show you what I have marked as Exhibit 14. This is the commission statement for 2007 for Terry Watson; do you see that?

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have done it to a certain extent. If we get a complaint, we try to write it down on a notepad and pass it on to the salesman, this is what this store says, et cetera.

Q. Can you name any salesmen other than Terry Watson that you have done that for?

A. That we have --

Q. Yeah, that you have documented a complaint and given it to them.

A. Yes, sir, I can.

Q. Who?

A. Billy Ross.

Q. You have four hundred salesmen --

A. Station manager in Oklahoma would be Billy Ross. Another one would be up in -- Brandon Davis in Morehead, Kentucky. Another one would be Nick Reeder in Milton, Wisconsin. And another one would be Chris Terrell in south Utah. And another one would be Dan Howard or

And is it true that his draw has exceeded his commissions earned for 2007?

A. Yes, sir, that's what this looks like.

Q. And so he owes you money, according to this document?

A. According to this document, he owes the company money, but he is not the only one that has been in this situation. And we have never collected this money and he has continued to be on the payroll. And we are not going to ask him for this money back even before -- without any kind of lawsuit. And we have some other people in the same boat.

Q. Now, when Terry came to see you in February of 2006, that was a new season, right? The spring season of 2006, correct?

A. Beginning a new season, yes, sir.

Q. When do salesmen report to

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work normally?

A. Depending on the geographic place that they are in. The northern route may not go until the middle of March, the southern route may go middle of January.

Q. Well, did Terry Watson have a route in February?

A. That's when we -- when I assigned him a route. Actually, let me get away from that. That's when I tried to create a route for him down in Donaldsonville, Louisiana.

Q. Okay. Well, you'd known since 2005 after talking to Mr. Alley that he wasn't going back to Bells, Tennessee, so what route did you assign him before then?

A. There wasn't a route available before then. I had to try to create him one.

Q. Well, Les Braun, he was working for you in 2005, wasn't he?

A. Yes, sir.

A. Oh, I was going to get him a job.

Q. Well, it's a good thing he made a complaint of age discrimination, then --

MR. GERHARDT: Object to the form.

Q. -- correct?

A. No, sir, that's not correct.

Q. Well, after he made his complaint, you created him a job, correct?

MR. GERHARDT: Object to the form.

A. No, sir, that's not the way it was.

Q. Had you created him a job before he made the complaint?

A. When he came to see me in February, that is not the same visit that evidently he came to see Tate with. I never saw Big Terry when he came to see Tate, nor did I receive any letter or anything about that.

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Q. He had to come from a route to take Terry's route, correct?

A. And Adam had already hired somebody to replace Les Braun, who was incidentally about sixty years old.

Q. Well, why would you hire somebody before -- if you were going to retain the employee, why would you hire somebody to replace them before you found him a route, sir?

A. I didn't hire him. Mr. Alley -- Mr. Alley hired this man to replace Les Braun in southern Illinois.

Q. And when was he hired --

A. This -- I don't know exactly. This man was about sixty years old that he hired.

Q. I see. What's his name?

A. I don't know. We can look it up.

Q. Well, so Terry Watson didn't have a job when he came to see you, did he?

Q. Are y'all both in the same location?

A. I travel a lot. I'm in and out of my office two and three days every week, so --

Q. Is Tate's office in Union Springs?

A. Yes, sir.

Q. Is your office in Union Springs?

A. Yes, sir.

Q. So y'all are -- are they both on the same piece of property?

A. Yes, sir.

Q. You were here for Terry Watson's deposition, correct?

A. Yes, sir.

Q. Why?

A. I hadn't seen Terry in two years, I wanted a chance to see him again.

Q. Do you remember cursing him and storming out of the deposition?

A. I did -- I did not curse

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Terry.

MR. GERHARDT: Object to the form.

A. I cursed, but I didn't curse at Terry.

Q. Okay, I apologize. You said you didn't have to listen to this BS, slammed your book and walked out, correct?

A. That's correct. I wasn't -- I wasn't under oath, I wasn't required to be here, so I left.

Q. What upset you?

A. I wasn't really upset.

Q. Do you normally behave that way?

A. No, sir.

Q. Well, what angered you?

A. I don't think I was all that angry, to tell you the truth. I think I acted more angry than what I really was.

Q. It was --

A. I apologize -- I apologize for acting angry.

Q. And who was that complaint from?

A. I don't know. But Mr. Hall has that, I don't have that.

Q. When you owned your own company, did you sell plants? Were you a salesman?

A. Yes, sir.

Q. You had a route?

A. I ran a route most of the time.

Q. Where was it?

A. I was sort of a fill-in man. If he wasn't doing his job, then I went and ran the route and tried to catch it up. I moved from route to route. That's why I knew all of my accounts and all of my customers on a personal basis.

Q. Has anybody ever called you and said we are out of flowers?

A. Has anybody ever called me and said we are out of plants or something?

Q. Yeah.

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Q. It was just a show?

MR. GERHARDT: Object to the form.

A. I wouldn't say that.

Q. Just trying to impress me?

A. No, I wasn't trying to impress you.

Q. It didn't work.

A. If I was trying to do that, I'm sure it didn't.

Q. Well, have you had any conversations later with Terry's station manager about his job performance?

A. No, sir.

Q. Have you had any complaints about Terry Watson's job performance lately from any source, customers or anybody?

A. Could you clarify lately?

Q. Well, when was the last time you got one?

A. I would say the latter part of March or maybe first of April.

A. Oh, yes, sir.

Q. That happens sometimes?

A. We would hope something like that happens. If nobody calls you and tells you we are out --

Q. That's a good thing?

A. -- then that means we are not selling nothing.

Q. Exactly.

A. But --

Q. Sometimes, and it's a good thing, your customers can sell more than anyone would reasonably anticipate, can't they?

A. Reword that for me.

Q. Well, there is a difference between a customer calling you and saying I ain't seen my salesman in six weeks and a customer calling you and saying we are out of plants, we are out of some vegetable or something?

MR. GERHARDT: Object to the form.

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Q. There is a difference in those two complaints, isn't there?

A. To a certain extent there is a difference in those two complaints.

Q. I mean, you can sell out of plants in three days, it may take you longer than three days to work your route, to visit all of your stores on your route, right?

A. We try not to have any route that takes longer than three days. We try to deliver our plants in two-day periods.

Q. You mean you can work your route from one end to the other in two days?

A. If we rerouted our routes and properly assigned the territory, and that's why we redo routes, where we can try to work it in two days. Some people can work a route in a day.

Q. The shorter your route, the easier it is to work, right?

A. And the longer you take

1 He has been working for you for thirty years. Can you say anything good about him?

A. He is a pleasant, likable person. And he was a hell of a nose guard on the football team.

Q. Did he play at Troy State?

A. (Nodding head affirmatively.) He couldn't go laterally, but you couldn't move him out of the middle either.

Q. Let's say that Terry continues to improve his sales performance and let's say he doesn't have any complaints from customers in the future; how long can Terry work for y'all as a route salesman? Do you have any mandatory retirement age?

A. No, sir. Like I say, we have a salesman on the route now that's seventy-one. If there is improvement in Terry, I would say Big Terry can work until he wants to retire. I can't guarantee him what route he will be on, but I can guarantee him a job.

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1 loading and the longer you take, you know, working the stores, and if you sleep in front of the stores and take up a lot of time, then the longer the -- the shorter the shelf life, so less sales, yes, sir.

Q. Well, Mr. Stuart, I don't get to talk to you but this one occasion, and I don't want you to come to court and tell me something I haven't heard. So do you know anything else that's negative about Terry Watson that you haven't told me about today?

A. Well, just like any people, I'm sure there are some negative things about Mr. Watson I'm leaving out, but we will let that ride for today. I will save that for court.

Q. Well, that's what I'm trying to get you not to do, save it for court.

A. I can't remember anything right now, though.

Q. All right. Well, do you know of anything positive about Terry Watson?

1 Q. Well, are you trying to find him a better route --

A. Yes, sir, always looking --

Q. -- shorter route?

A. Always looking for something to help him out.

MR. ROBERSON: All right. I don't believe I have any further questions, Mr. Stuart.

Do you have any questions?

MR. GERHARDT: I don't have any.

MR. ROBERSON: All right. That will conclude the deposition of Mr. Stuart at 2:12.

I told you I would get you out of here in time.

A. All right.

MR. ROBERSON: Off the record.

(Whereupon, the deposition of Joe Stuart was concluded at 2:12 p.m. on the 23rd day of

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CERTIFICATE

STATE OF ALABAMA)
JEFFERSON COUNTY)

I hereby certify that the
above and foregoing deposition was taken
down by me in stenotypy, and the questions
and answers thereto were reduced to
typewriting under my supervision, and that
the foregoing represents a true and
correct transcript of the deposition given
by said witness upon said hearing.

I further certify that I am
neither of counsel nor of kin to the
parties to the action, nor am I in anywise
interested in the result of said cause.

COMMISSIONER - NOTARY PUBLIC
ACCR LICENSE NO. 116

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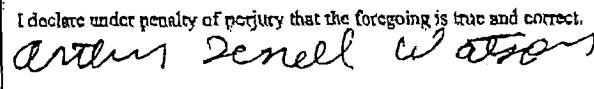
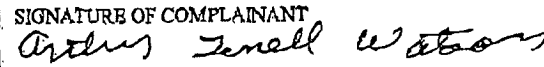
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PLAINTIFF ARTHUR WATSON'S
EVIDENTIARY SUBMISSIONS
EXHIBIT 8

CHARGE OF DISCRIMINATION		AGENCY <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC	CHARGE NUMBER 420-2006-63095
This form is dictated by the Privacy Act of 1974; See Privacy Act Statement before completing this form.			
and EEOC			
State or local Agency, if any			
NAME (Indicate Mr., Ms., Mrs.) Mr. Arthur Terrell Watson		HOME TELEPHONE (Include Area Code) Cell: (731) 267-6430	
STREET ADDRESS P.O. Box 106	CITY, STATE AND ZIP CODE Glenwood, Alabama 36034	DATE OF BIRTH 01/12/1945	
NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)			
NAME Bonnie Plant Farms, a division of AFC, Inc.	NUMBER OF EMPLOYEES, MEMBERS Over 300	TELEPHONE (Include Area Code) (334) 738-3102	
STREET ADDRESS 1727 Highway 223	CITY, STATE AND ZIP CODE Union Springs, Alabama 36089	COUNTY Bullock	
NAME	TELEPHONE NUMBER (Include Area Code)		
STREET ADDRESS	CITY, STATE AND ZIP CODE	COUNTY	
CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))		DATE DISCRIMINATION TOOK PLACE EARLIEST (ADEA/EPA) LATEST (ALL)	
<input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input checked="" type="checkbox"/> AGE <input type="checkbox"/> RETALIATION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> DISABILITY <input type="checkbox"/> OTHER (Specify)		January, 2006 through today <input checked="" type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):			
See Attachment A			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - (When necessary for State and Local Requirements)  I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.	
I declare under penalty of perjury that the foregoing is true and correct.  Date _____ Charging Party (Signature)		SIGNATURE OF COMPLAINANT  SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year) 6/2/06	

EEOC FORM 5 (10/94)

EXHIBIT A
CHARGE OF DISCRIMINATION

I have worked for a route salesman for Bonnie Plant Farms for fifteen (15) years. I have only had two routes assigned to me before January of 2006.

The route I was working in 2005 was in Bells, Tennessee. I developed that territory into a very lucrative route as I increased my business every year that I worked it. I underwent surgery to have my knee replaced and I lost 40 lbs.

When I returned in January of 2006, I was not put back to work. I brought my supervisor, Tate, this letter dated January 10, 2006. In it I complained of age discrimination. (See *Exhibit 1*). On February 2, 2006, I brought Tate another letter stating that I was released to return to work without restrictions. (*Exhibit 2*). I requested to be reassigned to my Tennessee route. I was not assigned to that route, but was given another route in Donaldsonville, Louisiana. I believe this assignment was made in retaliation for my complaint of age discrimination.

The Louisiana route was salary only. I made \$500.00 a week. I had made \$45,000.00 in Tennessee. I have increased the sales on my Louisiana route, but I still will make substantially less than on my Tennessee route. Now I have recently been assigned another route in the Jasper, Alabama. I continue to be assigned to routes where I do not have as much opportunity to succeed financially.

I believe I have been discriminated against because of my age sixty-one (61), in violation of the Age Discrimination and Employment act (ADEA), as amended. I also believe I have been retaliated against because of my complaints of age discrimination.

Arthur Zell Watson
6-2-06

RECEIVED
EEOC
JUN 6 2006
BIRMINGHAM DISTRICT OFFICE

January 10, 2006

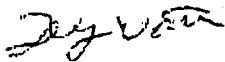
Dear Tate;

As you know I have worked for Bonnie as a route salesman for 15 years. I have only had two routes the whole time I worked here. I was involved in an accident on the job in December, 2002 and suffered some back and neck problems. I have continued to work and do my job. I increased my route sales and made every incentive bonus the company offered last year. I have always enjoyed my job and tried to do it to the best of my ability.

I cannot understand why my Tennessee route is being given to some one else, unless it is because I turn 61 years old on January 12, 2006. I was able to do my job last year and now I am being told that I cannot perform my job. Actually my health is better now than the last two years. I have lost 40 pounds and had a bad right knee replaced.

I love my job and all I want is to continue to do a good job. I need my job and my health insurance. Please don't take my job away from me.

Terry Watson



RECEIVED
EEOC

JUN 6 2006

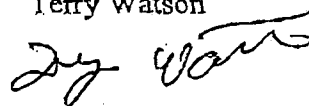
BIRMINGHAM DISTRICT OFFICE

February 2, 2006

Dear Tate;

I brought you a letter on January 10, 2006 which you have not responded to yet. I am bringing you a letter today from my doctor saying I am able to work without restrictions. I am ready, willing and able to go to work. Please put me to work on my Tennessee route. If you do not put me to work, I am going to find a lawyer because I believe you are discriminating against me because of my age.

Terry Watson



cc: Joe Stewart

RECEIVED
EEOC
JUN 6 2006
BIRMINGHAM FIELD OFFICE

PLAINTIFF ARTHUR WATSON'S
EVIDENTIARY SUBMISSIONS
EXHIBIT 9

RESPONSE TO EXHIBIT A

CHARGE OF DISCRIMINATION

I have worked for a route salesman for Bonnie Plant Farms for fifteen (15) years. I have only had two routes assigned to me before January of 2006.

Response: Mr. Watson worked in New Summerfield, Texas through 2003. At the beginning of season of 2004, Mr. Watson and a salesman stationed in Bells, Tennessee approached Bonnie Plant Farm asking to exchange routes. Mr. Watson wished to exchange routes due to his health condition not allowing him to operate the longer route in Texas. Mr. Watson's request for an exchange was granted and he worked the Bells, Tennessee route until January 2006. In January 2006, Mr. Watson was assigned a route in Louisiana, which later changed to Jasper, Alabama.

The route I was working in 2005 was in Bells, Tennessee. I developed that territory into a very lucrative route as I increased my business every year that I worked it. I underwent surgery to have my knee replaced and I lost 40 lbs.

When I returned in January of 2006, I was not put back to work. I brought my supervisor, Tate, this letter dated January 10, 2006. In it I complained of age discrimination. (See Exhibit 1). On February 2, 2006, I brought Tate another letter stating that I was released to return to work without restrictions. (Exhibit 2). I requested to be reassigned to my Tennessee route. I was not assigned to that route, but was given another route in Donaldsonville, Louisiana. I believe this assignment was made in retaliation for my complaint of age discrimination.

Response: Tate is the Safety Director, not Mr. Watson's supervisor. In Mr. Watson's letter dated February 2, 2006, he was threatening that if not placed back on his Tennessee route that he was going to find a lawyer because he believed he was being discriminated against because of his age. Routes are assigned to salesmen as the routes begin opening and salesmen are able to run the routes for which they are assigned. Bonnie Plant Farm holds an annual sales meeting each year in which the assigning of routes begin taking place. Mr. Watson did not attend the 2005 sales meeting in November 2005 for which routes began being assigned for the 2006 season. Therefore Bonnie Plant Farm assigned the Bells, Tennessee route to another salesman and Mr. Watson was assigned to the Donaldsonville, Louisiana route. Bonnie Plant Farm assigns routes to salesmen on the basis of which they feel will be most lucrative for the company and the salesmen. The assigning of routes has nothing to do with a salesman's age.

The Louisiana route was salary only. I made \$500.00 a week. I had made \$45,000.00 in Tennessee. I have increased the sales on my Louisiana route, but I still will make substantially less than on my Tennessee route. Now I have recently been assigned another route in the Jasper, Alabama. I continue to be assigned to routes where I do not have as much opportunity to succeed financially.

Response: *Bonnie Plant Farm opened a route in Donaldsonville, Louisiana in 2006. Mr. Watson was temporarily assigned to Donaldsonville, Louisiana where worked as a laborer and was paid a salary before his route was developed. Mr. Watson was originally assigned to Donaldsonville, Louisiana because of Donaldsonville being a new station and needing experienced salesmen to run the routes. On April 10, 2006, Mr. Watson began his route in Jasper, Alabama. Mr. Watson was assigned to Jasper, Alabama because it was an opportunity for Mr. Watson to operate a route closer to his home. Salesmen are paid on commission of sales, not on salary only basis. All salesmen receive a bi-weekly draw of \$1,000.00 that is deducted from the commission check that is paid at the end of the season. Mr. Watson has increase on his Jasper, Alabama route over his Bells, Tennessee route of last year.*

Mr. Watson's sales for the routes that he has ran fall routes are as follows:

2000 - \$233,852	New Summerfield, TX
2001 - \$258,807	New Summerfield, TX
2002 - \$296,564	New Summerfield, TX
2003 - \$298,997	New Summerfield, TX
2004 - \$255,586	Bells, TN
2005 - \$306,890	Bells, TN
2006 - \$383,987	Jasper, AL

The 2006 sales are estimated according to deliveries. (Sales are not complete at this point and a total for fall routes can not yet be determined.) Return amounts are deducted from the delivery amount to compute the total in sales.

I believe I have been discriminated against because of my age sixty-one (61), in violation of the Age Discrimination and Employment Act (ADEA), as amended. I also believe I have been retaliated against because of my complaints of age discrimination.

Response: Mr. Watson has in no shape form or fashion has been discriminated against due to his age or complaint of age discrimination. He was simply assigned another route by the company on the basis of what the company believes to be a lucrative business decision.

PLAINTIFF ARTHUR WATSON'S
EVIDENTIARY SUBMISSIONS
EXHIBIT 10

STATE OF ALABAMA

BARBOUR COUNTY

DECLARATION OF ARTHUR TERRELL WATSON

"My name is Arthur Terrell Watson. I reside at Glenwood, Alabama. I am an adult over the age of nineteen. I have personal knowledge of the facts set forth below.

I have been employed by Bonnie Plant Farm as a Route salesman for over fifteen years. I was formerly a route salesman working out of the Bells, Tennessee station.

I first went to the Bells Tennessee Station in 2004. I do not know what stores were on the route when Joe Stewart's brother, Luther Stewart ran the route in the 2003 season. In 2004, my route contained a Walmart and a Kmart both located in Germantown, Tennessee. Both of the stores were very good accounts and accounted for a good percentage of my sales. In 2005, both of these stores were removed from my route by Adam Alley and Joe Stewart. After losing these two stores, I was still able to increase my sales.

I have never received a write up or a counseling form because of any complaints about my job performance. Adam Alley never spoke to me concerning my job performance. I was never made aware of any complaint by Adam Alley, if there were any concerning my job performance. Adam Alley never told me that "if my job performance did not improve, he would request that I not be brought back to Bells the following season."

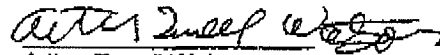
In Spring of 2006 I was moved to Donaldsonville, Louisiana. I worked there for approximately 3 weeks. This area had been devastated by hurricane Katrina a few months prior to my arrival. Sales there were lower because of all the hurricane damage that occurred along the Louisiana Gulf coast. Many of the stores had not reopened.

I was moved to Jasper, Alabama in the middle of the 2006 season. Station manager Joey Padgett never wrote me up. Joey Padgett occasionally gave me notes where customers had called in requesting that I leave specific varieties of plants. No one ever called and complained about my job performance to my knowledge. Chris

Sparks sales comparison in 2007 to my 2006 sales is based on me only working half of the season there and is inaccurate. The only way to accurately compare sales performance is to compare store to store and not route number by route number because stores are added to and deleted from routes each year."

I make the above declaration under penalty of perjury pursuant to 28 U.S.C. §1746 that the foregoing is true and correct and based upon my personal knowledge.

Executed on this 14th day of July, 2008.


Arthur Terrell Watson

PLAINTIFF ARTHUR WATSON'S
EVIDENTIARY SUBMISSIONS
EXHIBIT 11

January 10, 2006

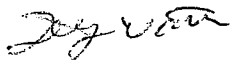
Dear Tate;

As you know I have worked for Bonnie as a route salesman for 15 years. I have only had two routes the whole time I worked here. I was involved in an accident on the job in December, 2002 and suffered some back and neck problems. I have continued to work and do my job. I increased my route sales and made every incentive bonus the company offered last year. I have always enjoyed my job and tried to do it to the best of my ability.

I cannot understand why my Tennessee route is being given to some one else, unless it is because I turn 61 years old on January 12, 2006. I was able to do my job last year and now I am being told that I cannot perform my job. Actually my health is better now than the last two years. I have lost 40 pounds and had a bad right knee replaced.

I love my job and all I want is to continue to do a good job. I need my job and my health insurance. Please don't take my job away from me.

Terry Watson



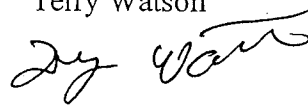
PLAINTIFF ARTHUR WATSON'S
EVIDENTIARY SUBMISSIONS
EXHIBIT 12

February 2, 2006

Dear Tate;

I brought you a letter on January 10, 2006 which you have not responded to yet. I am bringing you a letter today from my doctor saying I am able to work without restrictions. I am ready, willing and able to go to work. Please put me to work on my Tennessee route. If you do not put me to work, I am going to find a lawyer because I believe you are discriminating against me because of my age.

Terry Watson

A handwritten signature in cursive script, appearing to read "Terry Watson", written in dark ink.

cc: Joe Stewart

**PLAINTIFF ARTHUR WATSON'S
EVIDENTLARY SUBMISSIONS
EXHIBIT 13**

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ARTHUR T. WATSON,

Plaintiff,

v.

ALABAMA FARMERS

COOPERATIVE, INC. d/b/a

BONNIE PLANT FARMS,

Defendant.

Civil Action No.:

2:07-cv-520-WHA

DECLARATION OF BOBBY WINDERS

My name is Bobby Winders. I work at the Farmers Cooperative in Selmer, Tennessee. The business address is 581 Mulberry Avenue, Selmer, Tennessee 38375. I am giving this declaration of my own free will and under penalty of perjury. I have personal knowledge of the below stated facts.

I have worked here for seven years and I have been the retail sales manager for the last four years. As part of my responsibility, I deal with the route drivers who work for Bonnie Plant Farms. They deliver plants and vegetables which we sell to our customers. I would be the person with the responsibility for the Bonnie Plant drivers. I have never telephoned Bonnie Plant to complain of the job performance of any driver. I specifically have never called Bonnie Plant Farms to complain about the job performance of Terry Watson.

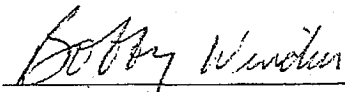
I have reviewed pages 41-44 of the Deposition of Joe Stuart. I do not have any personal knowledge of anything that would support Mr. Stuart's testimony. I also do not know of anyone at the Farmers Cooperative in Selmer who has called to make a complaint.

No one has advised me and it would be my personal responsibility to make management aware of any problem with service or deliveries.

At all times while he worked for Bonnie Plant in 2004 and 2005 on this route, Terry Watson's job performance was satisfactory to me.

I have read the above statement and I declare that it is true and correct under penalty of perjury.

Signed this the 9 day of July, 2008.


Bobby Winders

PLAINTIFF ARTHUR WATSON'S
EVIDENTIARY SUBMISSIONS
EXHIBIT 14

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ARTHUR T. WATSON,

Plaintiff,

v.

ALABAMA FARMERS
COOPERATIVE, INC. d/b/a
BONNIE PLANT FARMS,

Defendant.

Civil Action No.:

2:07-cv-520-WHA

DECLARATION OF DAVID BOSWELL


My name is David Boswell. My father is Frank Boswell. Frank is 81 years old. Together we run an independent farm supply store in Somerville, Tennessee. I am giving this declaration of my own free will and under penalty of perjury. I have personal knowledge of the below stated facts.

We are supplied some of our plants and vegetables by route salesman employed with Bonnie Plant Farms. Until last year, my father dealt primarily with the route salesman. Unfortunately, he was involved in a serious accident which has required him to be hospitalized for quite some period of time and has now been transferred to an assisted living facility. As part of my father's injuries, he has a diminished memory.

In the years 2004 and 2005 our Bonnie Plant representative was Terry Watson. Terry's job performance as a route salesman was no better and was no worse than any of our other salesman. From time to time, we have run out of plants and have called Bonnie Plant Farms to get more. That has happened before and after Terry Watson worked here.

I have read the above statement and I declare that it is true and correct under penalty of perjury.

Signed this the 11th day of July, 2008.


David Boswell

PLAINTIFF ARTHUR WATSON'S
EVIDENTIARY SUBMISSIONS
EXHIBIT 15

-----Original Message-----

From: wellnessgroupinc@aol.com [mailto:wellnessgroupinc@aol.com]

Sent: Wednesday, January 04, 2006 4:41

To: tate@ustconline.net

Subject: Watson Screening Results today

Tate:

A. Terry Watson's agility screen was limited by his reported MD restrictions to not do any material handling which involves stooping or "bending over" due to his neck condition. He states he has told Bonnie P about this before. He also would not do repeated or sustained overhead reaching due to the same neck problem as he states this flares up his neck/nerve problem.

He also could not do repeated step test due to his knees/total knee replacement in july 05. So his current work restrictions would include: No material handling, no repeated climbing/jumping, no repeated or sustained stooping, no repeated or sustained overhead reaching/tasks. He is at risk for falls if he were to work on a ladder or at heights as his single leg stance test results were only 3-4 seconds R leg, and only 10-12 seconds L leg - compared to the minimal goal of 30 seconds w/out loss of balance. He is fine to drive, get in/out of truck, maybe help carry items/plants at waist to knuckle level and to shoulder level but not overhead.

He is also borderline w/ his blood pressure, even though he had BP med ajustment about 2 months ago by his MD in Luverne - Dr. Tompkins. He states he will go back and follow-up re this.

From a functional LE strength/flexibility, work fitness standpoint, I'm going to send letter to Dr. DiChiara recommending a customized fitness/therapy program to improve his climbing, balance, flexibility for better work functions of in/out truck, loading or unloading functions, etc. - but only then w/ medical records re his neck problem received from his Hughston clinic MD. He also states he is seeking to go to pain mgt MD at Hughston clinic re meds/treatment, etc. A full spine/obesity and balance/fitness type therapy program coordinated w/ all MDs is not a bad idea for him if he will participate. He states he has lost about 40 lbs in past year, is walking better than for over a year, is more able to work now than 1 year ago vs. his job, and epxresses motivation to lose weight - 5 lbs/ month, get more fit, etc.

Mark

PLAINTIFF ARTHUR WATSON'S
EVIDENTIARY SUBMISSIONS
EXHIBIT 16



ATTENDING PHYSICIAN STATEMENT

DATE: January 26, 2006

CHART NUMBER: 926602

PATIENT NAME: Arthur Watson

DOB: 01/12/45

DIAGNOSIS: Cervical Spine Degeneration, Diffuse Idiopathic Skeletal Hypertrophy

HOSPITAL: Hughston Sports Medicine Hospital

ADMISSION: DISCHARGE:

RETURN TO WORK: 1/26/06

RESTRICTIONS: None

Next Appointment: As needed

Comments: Mr. Watson was last seen on 12/14/05. He was released with no restrictions.



J. Kenneth Burkus, M.D.

Tax I.D.# 58-1155460

PLAINTIFF ARTHUR WATSON'S
EVIDENTIARY SUBMISSIONS
EXHIBIT 17

08-25-03 11:00:25 FROM: AFC Fax
 88/25/2003 18:45 3347383141

TO: 308-5650 PAYROLL FA PAGE 15
 BONNIE PLANT FARM PAGE 15

BONNIE PLANT FARM
 COMMISSION FOR SPRING OF 2003

AFC

DATE 22-Aug-03

NAME LUTHER L. STUART RT. NO. +18-3
 S.S.# [REDACTED]

1	SALES	\$263,171.61	\$260,000.00
2	15% of 1st \$200,000	\$200,000.00	\$30,000.00
3	23% of all over \$200,000	\$60,000.00	\$13,800.00
4	1.0% of Deliveries	\$348,171.30	\$3,481.71
5	1% of Sales for Yrs./Age	\$260,000.00	\$2,800.00
6	0.33% FOR A/S/P	\$0.00	\$0.00
7	-1% for less than 97% consigned (locals)		\$0.00
8	Chain Store Fines and/or Accident Fines		-\$850.00
9	TOTAL GROSS COMMISSION		\$49,031.71
10	Route Labor (can't be less than 2½ to 3½% of Sales)		-\$8,291.10
11	Misc. Labor		\$0.00
12	COMMISSION LESS LABOR		\$40,740.61
13	Company Assessment (if line 12 is over \$30,000)		-\$1,500.00
14	Credit Card		-\$1,201.73
15	Racks & Signs		-\$2,500.00
16	Misc (lumber, etc)		\$0.00
17	COMMISSION DUE TO DATE		\$35,538.88
18	Commission Already Paid		-\$17,000.00
19	Commission To Be Paid Bi-Weekly		-\$13,000.00
20	NET COMMISSION DUE BEFORE ADVANCE (Taxes will be taken out of line 20)		\$5,538.88
21	ADVANCES		-\$3,050.00
22	COMMISSION DUE BEFORE TAXES		\$2,488.88

*Paid
 8-29-03*

CONFIDENTIAL

AFC 00548

PLAINTIFF ARTHUR WATSON'S
EVIDENTIARY SUBMISSIONS
EXHIBIT 18

DATE 19-Dec-05

BONNIE PLANT FARM
COMMISSION FOR SPRING OF 2004

NAME ARTHUR T. WATSON

S.S.# [REDACTED]

RT. NO. 18-03

SALES		Sales	Collected	90% of Sales
FALL 2003	.....	\$37,187.44	\$36,453.22	
SPRING 2004	.....	\$255,586.88	\$253,704.27	\$0.00
TOTAL		\$292,774.32	\$290,157.49	\$263,496.89

16.00% of collected Sales	\$290,157.49	.....	\$46,425.20
1.00% for age and years	\$0.00	.....	\$0.00
2.00% for sales of \$300,000	\$0.00	.....	\$0.00
2.25% for sales of \$325,000	\$0.00	.....	\$0.00
2.50% for sales of \$350,000	\$0.00	.....	\$0.00
2.75% for sales of \$375,000	\$0.00	.....	\$0.00
3.00% for sales of \$400,000	\$0.00	.....	\$0.00
3.25% for sales of \$425,000	\$0.00	.....	\$0.00
3.50% for sales of \$450,000	\$0.00	.....	\$0.00
3.75% for sales of \$475,000	\$0.00	.....	\$0.00
4.00% for sales of \$500,000	\$0.00	.....	\$0.00
4.25% for sales of \$550,000	\$0.00	.....	\$0.00
4.50% for sales of \$600,000	\$0.00	.....	\$0.00
5.00% for sales of \$650,000	\$0.00	.....	\$0.00
1.00% for 4% sales increase	\$0.00	.....	\$0.00
2.00% for 8% sales increase	\$0.00	.....	\$0.00
3.00% for 15% sales increase	\$0.00	.....	\$0.00
4.00% for 20% sales increase	\$0.00	.....	\$0.00
6.00% for 30% sales increase	\$0.00	.....	\$0.00
7.00% for 40% sales increase	\$0.00	.....	\$0.00
8.00% for 50% sales increase	\$0.00	.....	\$0.00
30.00% for sales collected on 94	\$4,239.54	.....	\$1,271.86
Total			\$47,697.06

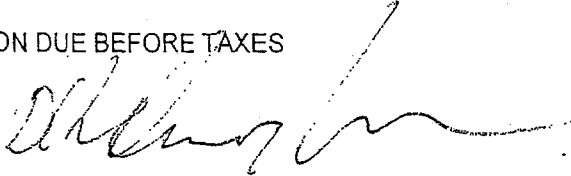
Chain Store Fines and/or Accident Fines	.....	(\$1,000.00)
Company Assessment	.....	(\$2,500.00)
Route Labor (can't be less than 2½ of Sales)	.....	(\$14,083.18)
Credit Card	.....	(\$24.24)
Misc (lumber, etc)	.....	(\$880.00)
Racks & Signs	.....	(\$1,550.00)

COMMISSION DUE TO DATE	.....	\$27,659.64
Commission Already Paid	.....	(\$26,000.00)
Commission To Be Paid Bi-Weekly	.....	\$0.00
NET COMMISSION DUE BEFORE ADVANCE	\$1,659.64

(Taxes will be taken out of the above line)

ADVANCES	\$0.00
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COMMISSION DUE BEFORE TAXES	\$1,659.64
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PLAINTIFF ARTHUR WATSON'S
EVIDENTIARY SUBMISSIONS
EXHIBIT 19

BONNIE PLANT FARM

COMMISSION FOR SPRING OF 2005

DATE 19-Dec-05
 NAME ARTHUR T. WATSON
 # [REDACTED]

RT. NO. 18-03-30-04

SALES FALL 2004
 SPRING 2005

Sales	Collected
\$43,490.31	\$33,356.64
\$306,890.04	\$302,703.95
<u>\$350,380.35</u>	<u>\$336,060.59</u>

12.00% of collected Sales	\$336,060.59	\$40,327.27
1.00% for age and years	\$0.00	\$0.00
1.50% for school program	\$336,060.59	\$5,040.91
1.50% for Wal-Mart increase	\$336,060.59	\$5,040.91
1.00% for rack and sign program	\$336,060.59	\$3,360.61
1.00% for having completed 5 of 11	\$336,060.59	\$3,360.61
2.00% for \$25,000 increase collected	\$0.00	\$0.00
2.00% for sales of \$310,000	\$0.00	\$0.00
2.25% for sales of \$335,000	\$336,060.59	\$7,561.36
2.50% for sales of \$360,000	\$0.00	\$0.00
2.75% for sales of \$385,000	\$0.00	\$0.00
3.00% for sales of \$410,000	\$0.00	\$0.00
3.25% for sales of \$435,000	\$0.00	\$0.00
3.50% for sales of \$460,000	\$0.00	\$0.00
3.75% for sales of \$485,000	\$0.00	\$0.00
4.00% for sales of \$510,000	\$0.00	\$0.00
4.25% for sales of \$560,000	\$0.00	\$0.00
4.50% for sales of \$610,000	\$0.00	\$0.00
5.00% for sales of \$660,000	\$0.00	\$0.00
6.00% for sales of \$1,000,000	\$0.00	\$0.00
1.00% for 5% sales increase	\$0.00	\$0.00
2.00% for 10% sales increase	\$0.00	\$0.00
3.00% for 15% sales increase	\$336,060.59	\$10,081.82
4.00% for 20% sales increase	\$0.00	\$0.00
5.00% for 25% sales increase	\$0.00	\$0.00
6.00% for 30% sales increase	\$0.00	\$0.00
7.00% for 40% sales increase	\$0.00	\$0.00
8.00% for 50% sales increase	\$0.00	\$0.00
25.00% for sales collected on 94	\$3,533.63	\$883.41
5.00% if a 5% increase on rt. 94	\$0.00	\$0.00

Total \$75,656.89

Chain Store Fines and/or Accident Fines (\$1,800.00)

Route Labor (can't be less than 3% of Sales) (\$17,691.90)

Credit Card (\$839.57)

Misc (lumber, shirts, etc) (\$300.00)

Racks & Signs (\$2,500.00)

COMMISSION DUE TO DATE \$52,525.42

Commission Already Paid (\$25,000.00)

Commission To Be Paid Bi-Weekly (\$1,000.00)

NET COMMISSION DUE BEFORE ADVANCE (Taxes will be taken out of this line) \$26,525.42

ADVANCES (\$2,750.00)

COMMISSION DUE BEFORE TAXES \$23,775.42

PLAINTIFF ARTHUR WATSON'S
EVIDENTIARY SUBMISSIONS
EXHIBIT 20

BONNIE PLANT FARM

COMMISSION FOR SPRING OF 2006

DATE 17-Mar-07
 NAME LESLIE H. BRANUM
 S.S.# [REDACTED]
 RT. NO. 18-03

	Sales	Collected	90%
SALES SPRING 2006 TOTAL	\$383,712.44	\$378,622.05	\$345,341.20

13.00% of collected Sales	\$378,622.05	\$49,220.87
1.50% for Wal-Mart increase	\$378,622.05	\$5,679.33
1.00% for Lowe's increase	\$378,622.05	\$3,786.22
1.00% for Home Depot increase	\$378,622.05	\$3,786.22
0.50% for K-Mart increase	\$0.00	\$0.00
0.50% Non-chain stores increase	\$378,622.05	\$1,893.11
0.50% for having completed a,b,c,d,e,	\$378,622.05	\$1,893.11
2.00% for \$25,000 increase collected	\$0.00	\$0.00
2.00% for sales of \$325,000	\$0.00	\$0.00
2.50% for sales of \$360,000	\$378,622.05	\$9,465.55
3.00% for sales of \$410,000	\$0.00	\$0.00
3.50% for sales of \$460,000	\$0.00	\$0.00
4.00% for sales of \$510,000	\$0.00	\$0.00
5.00% for sales of \$660,000	\$0.00	\$0.00
1.00% for 10% sales increase	\$0.00	\$0.00
2.00% for 15% sales increase	\$378,622.05	\$7,572.44
3.00% for 20% sales increase	\$0.00	\$0.00
4.00% for 25% sales increase	\$0.00	\$0.00
6.00% for 40% sales increase	\$0.00	\$0.00
25.00% for sales collected on 94	\$765.06	\$191.27
5.00% if a 5% increase on rt. 94	\$0.00	\$0.00
Less 1% No Route 94 Customers	\$0.00	\$0.00
Less 40% not paid on Non-Chain Stores	\$3,274.43	(\$1,309.77)
Less 1% School Program Non-participation	\$0.00	\$0.00

GROSS COMM. \$82,178.34

Chain Store Skip Fines	(\$850.00)
DOT Fines	\$0.00
Route Labor (can't be less than 3% of Sales)	(\$12,736.85)
Credit Card	(\$62.00)
Misc (lumber, shirts, etc) shirts	(\$192.08)
Unauthorized Credit Card Charges \$0.00 X3	\$0.00

NET COMMISSION \$68,337.41

Assessment	(\$7,000.00)
Commission Already Paid DRAWN THROUGH 11-17-06	(\$57,543.77)
Commission To Be Paid Bi-Weekly TO DRAW THROUGH 2-02-07	\$0.00

NET COMMISSION DUE BEFORE ADVANCE (Taxes will be taken out of this line) \$3,793.64

ADVANCES \$0.00

COMMISSION DUE BEFORE TAXES \$3,793.64

Commission Already Paid	\$61,337.41
Commission Accrued	\$0.00

CONFIDENTIAL

AFC 00626

PLAINTIFF ARTHUR WATSON'S
EVIDENTIARY SUBMISSIONS
EXHIBIT 21

Bonnie Plant Farm Commission for Spring 2007

Date: February 29, 2008
 Name: LESLIE H. BRAMUM
 Rt. No: 18-3

	Gross Collected Sales	Net Collected Sales
Spring 2007 Total	431,228.75	405,355.03
Tiered Base		41,446.15
National Route Expense Allow		6,080.33
Total Base Commission		47,526.48

Incentives		Rate	
a) Wal-Mart/Home Depot Increase	405,355.03	X 1%	4,053.55
b) Wal-Mart/Lowe's Increase	405,355.03	X 1%	4,053.55
c) Wal-Mart/Kmart/Non-chain	405,355.03	X 1%	4,053.55
d) Sales % Increase	816.07	X 6%	48.96
e) School Cabbage Program	405,355.03	X 1%	4,053.55
f) Final Route Run	405,355.03	X 1%	2,605.85
g) Racking and Signing	405,355.03	X 2%	8,107.10
Total Incentives			26,976.12
Gross Commissions			74,502.59

Deductions		
a) 70% Rule		.00
b) Driver Helper/Labor		15,413.25
c) Credit Card/Hotel		86.96
d) Lumber		904.50
e) National Ad Exp	405,355.03 X 1.5%	6,080.33
f) Non-Chain A/R Collection		.00
g) DOT Fines		25.00
h) Skip Fines		.00
i) Credit Card Penalty		.00
Total Deductions		23,510.04

Commission Earned	50,992.56
Less: Draws Thru 9/7/07	22,500.00
Less: Draw Remainder thru 2/8/07	18,705.71
Commission Due	9,786.85
Prior Settlements	6,763.67
Collected Advances	4,800.00
Commission Remaining	3,023.18
Remaining Advances	.00